U.S. Department of Transportation

# Risk Management Manual for the Public Transit Industry

## Volume 3

August 1988

UMTA Technical Assistance Program

# Risk Management Manual for the Public Transit Industry

Volume 3
August 1988

Prepared by
MacDorman and Associates
4808 North 29th Street
Arlington, Virginia 22207
in association with
Advanced Risk Management Techniques
Cambridge Systematics, Inc.
Public Risk and Insurance
Management Association
Peter Schauer Associates

Prepared for
Office of Technical Assistance and Safety
Urban Mass Transportation Administration
U.S. Department of Transportation
Washington, D.C. 20590

Distributed in Cooperation with
Technology Sharing Program
U.S. Department of Transportation
Washington, D.C. 20590

**DOT-T-88-25**

## TABLE OF CONTENTS



This manual includes three volumes. Volume 1 includes Chapters 1, 2, and 3; Volume 2 includes Chapter 4; and Volume 3 includes Chapters 5, 6, 7, and 8. Referenced appendices are included in the appropriate volume.

## TABLE OF CONTENTS (Continued)

## TABLE OF CONTENTS (Continued)

## TABLE OF CONTENTS (Continued)

## TABLE OF CONTENTS (Continued)



**APPENDICES**

## LIST OF EXHIBITS

## LIST OF EXHIBITS (Continued)

# V. RISK TRANSFER

This chapter addresses the transfer of risk through commercial insurance and non-insurance contracts. Traditionally, private businesses and public organizations, like transit systems, have relied exclusively on commercial insurance to manage and finance risk. Today, as discussed in Chapters III and IV of this manual, this passive approach has been replaced by the active assumption of risk and its responsibilities. (For discussion of self-funded retained risk approaches, see Chapter IV.)

The chapter includes six sections. The first section provides background on the history of insurance and the risk management concept of risk transfer. The second section reviews the transfer of risk through commercial insurance and through non-insurance methods, focusing on the types of coverage and initiatives that an organization should consider to protect its property, operations and employees.

The last four sections proceed from the assumption that the transit system has decided that commercial insurance has a place in its risk management program. If so, the agency needs information on the different types of policies, the content and structure of an insurance policy, and the techniques of purchasing commercial insurance.

## BACKGROUND

This section begins by reviewing the evolution of the commercial insurance industry and then discusses the more recent concepts of risk transfer within a risk management program.

### History of Commercial Insurance[1]

The principles of commercial insurance date back to the Babylonians and Hindus. These cultures used contracts known as "bottomry" loans to shift the burden of risk from the owners of ships and cargo to money lenders who agreed to cancel the loans if the ships or their contents were lost in voyage. If the voyage was successful, the money lender received a high fee to cover the cost of both risk and interest. The Phoenicians, Greeks, and Romans had similar contracts to protect marine ventures. In fact the contracts used at these times are similar, in many respects, to those used 2,000 years later in the marine insurance industry.

In historical times risks were not only shifted from one party to another but they were also pooled or shared. The Bible describes instances of communities

---

[1]David L. Bickel, General Insurance, the Irwin Series in Insurance and Economic Security, David W. Gregg, Consulting Editor, Homewood, Illinois.

sharing risk for "fat and lean years" as does literature on Chinese merchant practices.

In the middle ages the underwriter as a financial specialist evolved to support English and French maritime risks. Venetian decrees of the 15th century regulated marine insurance. About this time specialized services for risk transfer evolved in conjunction with trade and organizations, such as Lloyds of London, which exist today. Fire insurance was introduced in the 17th century, prompted in part by a fire in 1666 that destroyed about 85 percent of London.

In about 1720 companies, rather than individuals, began to provide insurance. These businesses developed first in England and were later introduced in the United States. Benjamin Franklin organized the first such company in America in 1752, the Incorporated Fire Insurance Company.

The insurance industry in the United States was very small until after 1800. During the 1800s the industry began to expand, particularly in fire insurance. At the same time the insurance industry became more formal and structured. For example, in 1850 the first state regulation of insurers began in the United States with the establishment of boards and commissions for oversight and supervision.

Significant expansion of the insurance industry occurred in the twentieth century as major industries grew, new risks were introduced and risks changed. Importantly, the transportation industry changed significantly as railroads and horse-drawn vehicles were forced to compete for commercial and private transportation with trucks, airplanes, buses, streetcars and automobiles. New developments were introduced such as workers' compensation (in 1911), private automobile insurance, crime and riot insurance, and health insurance covering high medical costs. By the 1970s private commercial insurance was almost a $100 billion dollar per year industry affecting the operations of all businesses and the lives of most individuals.

### Current Risk Management Philosophy and Insurance

Buying commercial insurance--the traditional method for public agencies to handle risk--allows an organization to pay a known cost (i.e., a premium) to transfer liability for an unknown and possibly large loss to an outside party. Through the purchase of insurance each organization spreads its risk among the many insureds.

While insurance can be an appealing way to manage risk, it is also, in many instances, an expensive alternative. Organizations must realize that 1) purchasing insurance means paying the insurer fees to manage and administer the policy and make a profit, and 2) in the long run premium costs must be weighed against the loss recoveries and the services received from insurers. Risk financing costs can sometimes be reduced when an organization finances and manages all or a portion of its risk.

Rather than the first and only alternative, commercial insurance should be one of several risk financing alternatives considered by a risk manager. Insurance is usually the most appropriate method to finance catastrophic losses, those losses described in Chapters II and IV as low frequency/high severity losses. Prudent organizations should assume their predictable (high frequency/low severity) losses and determine the extent to which low frequency/low severity and low frequency/high severity losses can also be assumed.

Recognizing that some risks cannot be avoided, eliminated or financed, risk managers must make decisions about which risks should be transferred through insurance and non-insurance contracts. The balance of this chapter deals with various aspects of this decision-making process.

## RISK TRANSFER: INSURANCE AND NON-INSURANCE

This section reviews the transfer of risk through commercial insurance and non-insurance methods. The first part focuses on the types of commercial insurance a transit system should consider. The second part reviews contractual and related methods that can be pursued to require other entities, such as contractors, to cover risks.

### Insurance Coverage

Many exposures of transit systems are similar to those of any public or private organization that owns or leases property, provides employment, has directors and produces goods or services. A few exposures are unique to public transportation or are more important to transit systems than to other organizations. These exposures include, for example, rail operations liability.

Appendix J discusses the usual types of insurance that a transit system purchases for its key exposures. This appendix is intended as an overview; more detailed information should be pursued from other sources as needed.

### Non-Insurance Transfer of Risk

Transit systems may transfer risk by methods other than purchasing insurance: first, they can have contractual hold-harmless and indemnification agreements with contractors and other service providers and second, they can require these firms to carry adequate insurance (and should review all contracts to ensure that the specified coverage and limits are in place). You should pursue these practices whenever possible to reduce the exposure of the transit system.

### Certificates of Insurance

Transit systems contract for a wide range of services (including the operations of some or all of one or more modes of service, vehicle maintenance, planning, design and construction of facilities, service planning, legal advice, accounting and payroll, and management information systems) and purchase diverse products and materials (including revenue and non-revenue vehicles, vehicle maintenance products and office equipment). Because principals (i.e., contracting entities) can be held liable for the negligence of independent contractors it is important to require the contractor to buy and provide evidence of its existence.

Transit systems may, for example, require some or all of the following types of insurance from contractors:

- Liability - including commercial, general, and sometimes professional liability coverages;
- Workers' compensation - to cover injuries to the contractors' employees;
- Bid bonds - to provide written surety (generally 10% of the bid) to guarantee that if selected a contractor will enter into contract and provide a performance bond; and
- Performance and payment bonds - to guarantee timely completion, according to the contract terms.
- Builders' risk - coverage for damage to a new transit facility during construction.

Transit systems should carefully review all contracts and required coverage terms and limits to fit the specific situation. Usually the transit system should be named as an insured and be advised of cancellation not less than 30 days prior to its effect. In addition to establishing these requirements, you should assess the quality of the contractor's insurers. These precautions are important since costs may revert to the transit system if the contractor becomes insolvent and its insurance is not adequate or otherwise does not respond.

### Hold Harmless Agreements

Transit systems should enter into hold harmless and indemnification agreements to limit and transfer risk to contractors. These agreements state that one party to a contract agrees to indemnify the other party for all claims and legal expenses incurred in a specific situation. (The indemnitee is the party held harmless and the indemnitor accepts the risk.) There are three types of hold harmless agreements.

- Limited form - The indemnitee is held harmless for the indemnitor's own negligence only. This form affirms the contractor's legal responsibilities and passes on very little of the transit system's liability to the contractor.

- Intermediate form - The indemnitee is held harmless for the indemnitor's negligence or joint negligence. If both parties are negligent, the contractor assumes the full costs. (Disagreements often occur regarding shared or joint negligence.) Exhibit V.1 is an example of a hold harmless clause of this type.

- Broad form - The indemnitee is held harmless for all possible suits, including the indemnitee's sole negligence. The indemnitee is free of all claims and legal expenses arising out of the contractor's activities since all responsibility falls to the contractor. Local, state and Federal statutes must be examined before entering into these agreements since the broad form is illegal in many states.

Some risk management authorities recommend that the principal (i.e., the transit system) maintain liability insurance as a back-up even when evidence of insurance certificates and hold harmless agreements is obtained. This extra step is suggested in case the contractor's insurance is not adequate or if some aspect of an agreement or contract is found to be unenforceable.

## TYPES OF INSURANCE POLICIES

Insurance policies are structured in many different ways. The differences among policies affect such elements as the extent of coverage, the distribution of payment for claims between the insured and the insurer, the timing and amount of payment for premiums, and the types of services offered by the insurer.

### General Structure of Liability Insurance Policies

Insurance is purchased in layers. The first layer, which covers smaller and more frequent claims, is typically responsible for the largest volume of losses and therefore the highest premium cost. Generally smaller organizations with limited financial resources and/or low loss frequency use this type of insurance. Often insurers do not offer this type of coverage to high risk organizations, promoting them to self-insure their smaller and more frequent claims. Excess or umbrella insurance provides coverage above primary or underlying insurance.

- Excess liability - provides higher limits of coverage generally in the same areas as the primary insurance. Some additional high risk exposures may be added although most policies reference the primary policy regarding coverage.

- Umbrella liability - provides higher limits of coverage for a broader range of exposures, generally with fewer restrictions, than the primary insurance. This type of policy is viewed as very important since it extends protection for high level losses in many areas that might otherwise be uninsured.

## EXHIBIT V.1

## HOLD HARMLESS CLAUSE

_____
(ORGANIZATION)

(Name of Contractor) agrees to indemnify and hold harmless the (organization), its agents, employees or any other person against loss of expense including attorneys' fees, by reason of the liability imposed by law upon the (organization), except in cases of the (organization's) sole negligence, for damage because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of this agreement, whether such injuries to persons or damage to property are due or claim to be due to any passive negligence of the (organization) its employees or agents or any other person. It is further understood and agreed that the contractor shall (at the option of the (organization) defend the (organization) with appropriate counsel and shall further bear all costs and expenses, including the expense of counsel, in the defense of any suit arising hereunder.

Source: Public Risk Management Association, Washington, D.C.

Excess and umbrella insurance may both be purchased either "up to" a stated limit or as a stated amount "in excess of" primary insurance. The first approach would, for example, provide a total of $5 million coverage while the second approach would provide $5 million in addition to the amount of the primary insurance. Generally the second approach has a higher cost premium although the level of primary coverage will influence premium rates.

Exhibit V.2 provides diagrams of a straight excess policy with a $5 million limit and an umbrella policy with a $5 million limit in excess of the primary insurance. The right side of the umbrella insurance diagram shows that the umbrella policy provides broader coverage than the primary insurance but that these exposures are subject to a self-insured retention.

Transit systems should carefully review their policies for all layers of insurance. It is important, for example, that the policy (dates and the underlying limits of excess or umbrella insurance match to avoid gaps in coverage. Exclusions must be carefully noted to determine whether areas included in the primary insurance are or are not included in the higher layers of insurance.

**Occurrence vs. Claims-Made Liability Insurance Policies**

Traditionally, insurance policies have been written on an "occurrence" basis. This type of policy served insureds and insurers well for many years. However, factors such as economic inflation, long discovery periods for claims, and increased litigiousness have resulted in the introduction of the "claims-made" liability insurance policy. From the insured's position one claims-made problem lies in buying a coverage limit today that is adequate to cover claims made possibly many years in the future. From the insurer's position it is impossible to accurately predict tomorrow's costs for today's occurrences and therefore to price insurance policies.

- Occurrence coverage is triggered when bodily injury or property damage occurs, not when the claim is reported. An injury caused in an accident in 1986, but not reported as a claim until 1988, triggers the 1986 occurrence policy.

- Claims-made policies generally stipulate that coverage is triggered when a claim for damages is "duly received or recorded" either verbally or in writing, to the insured or the insurer, whichever comes first. All claims must both occur and be reported in the specified time period of the policy. A retroactive date is designated in the policy that specifies the cut-off date for claims. The insurer has no obligation for incidents that occurred before the retroactive date.

A significant problem with the claims-made policies is the potential for gaps in coverage, in particular if the insurer or the insured cancels or does not renew a policy. To reduce these problems you should negotiate with your insurer to extend the retroactive date to include occurrences that happened prior and subsequent to

## EXHIBIT V.2

## COMPARATIVE DIAGRAMS OF EXCESS AND UMBRELLA INSURANCE

DIAGRAM OF A $5 MILLION EXCESS

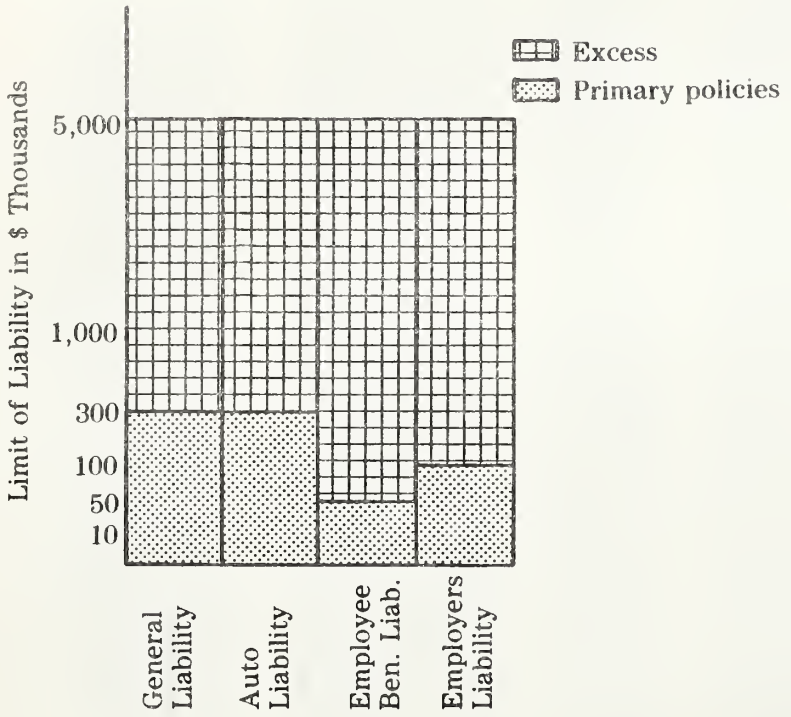
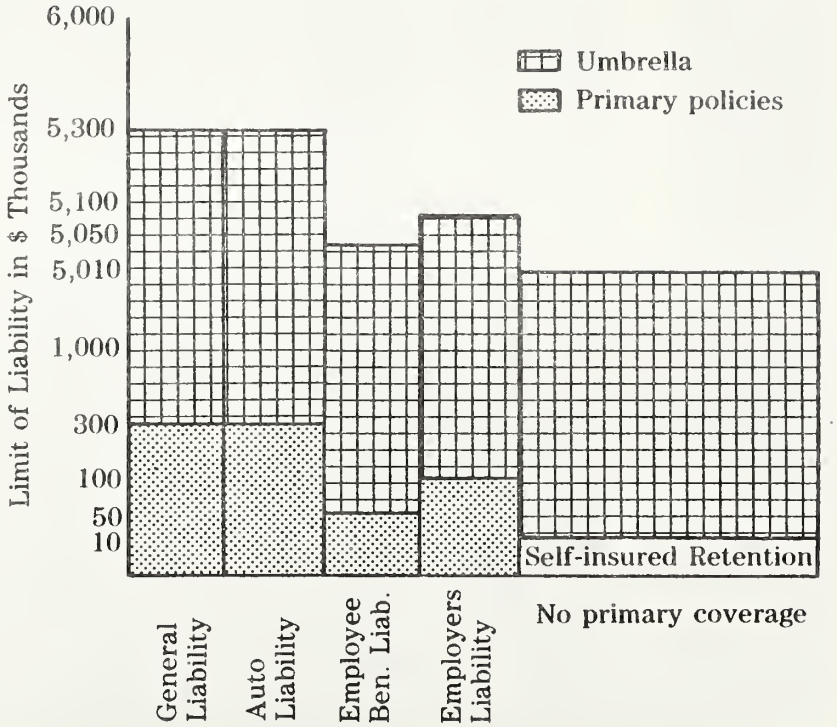



DIAGRAM OF A $5 MILLION UMBRELLA




Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610, 1988, Topic G-2.

the policy period, but are reported during or after the policy period. For example, the retroactive date for the current policy should coincide with the dates of the prior claims-made policy.

Appendix K provides a more detailed review of the differences between occurrence and claims-made liability insurance policies.

### Insurance Policies: Differences in Form

The traditional approach to purchasing insurance is to obtain guaranteed cost, first dollar insurance. This means that you pay the premium up front or during the policy year at monthly or quarterly intervals. All claim-related costs and administration are the responsibility of the insurer, regardless of the frequency or severity of the losses. While such policies impose little administrative burden on the transit system, they are the most costly type of coverage and are often not available, in particular to larger transit systems or during hard insurance markets, described in Chapter I of this manual.

Appendix L describes a number of insurance premium payment options that have been introduced as alternatives to the traditional guaranteed cost, first dollar insurance policies. The types of policies reviewed include:

- deductible insurance plans
- self-insured retention plans
- variable cost insurance
- paid loss retro insurance
- compensating balance plans

The discussion in the appendix is introductory and more information should be sought on the different options prior to obtaining coverage.

## METHODS OF OBTAINING INSURANCE

Transit systems have traditionally purchased insurance alone, as a single buyer. This section discusses a number of alternatives to this approach. These alternatives are intended to benefit the insured by reducing the cost of premiums, increasing the availability of coverage, and providing some coverage for high risk insureds or during hard insurance markets.

## Group Insurance Buying Pools

When two or more entities decide to jointly purchase insurance, a group buying pool is formed. The goal of the pool is to obtain a net cost reduction from the insurer justified by its reduced administrative expenses and/or its improved ability to predict losses because of the volume represented by the larger buying unit.

In the public sector, intergovernmental, interlocal and joint powers agencies have long purchased insurance and other services and commodities under laws that exist in most states to encourage such cooperation. In soft and even normal insurance markets, this buyer-driven technique works well in reducing costs usually on the order of 15% to 20%. To achieve these savings, individual premiums must usually aggregate to $500,000 or more.

In a hard insurance marketplace, an existing group of insurance buyers is unlikely to receive a quantity discount, even if the facts would indicate one is justified. Existing groups do have the potential, however, to resume receiving discounts after the insurance market returns to normal. A new insurance buying group--formed during a hard insurance market situation--may be less able to find coverage at any price than each member of such a group can individually. Accordingly, forming insurance buying groups is not necessarily a good short-run option to pursue in a hard market.

Buyer-driven insurance groups have been formed by public entities for years. (See Chapter IV for further discussion on insurance pools.) In addition to often lowering costs, such groups have been successful in:

- obtaining coverage with terms broader than those normally available to an individual insurance buyer.
- collecting and retaining loss and exposure characteristics to use in preventing future losses, buying insurance and considering alternatives to insurance.
- promoting loss prevention activities such as driver training and safety award programs.

The Risk Retention Act of 1986 facilitated interstate risk retention groups and the formation and operation of national purchasing groups. These groups are not insurance companies but are groups that purchase conventional insurance, designed to give small organizations a way to increase their premium volume and face the market as part of a large entity.

## Mass Marketed Insurance

Mass marketed insurance varies from group buying pools in that it is:

- developed by an insurance provider, i.e., a broker, agent or insurer

. heavily promoted and managed by the same provider.

While often an industry trade group sponsors or endorses such a mass marketed program, its success or failure rests quite heavily on the vendor who develops and operates it. An often repeated scenario involving mass marketed insurance programs includes roughly the following events:

. Insurer and broker identify an industry in which they would like to capture a significant portion of the market.

. A marketing plan (hopefully including the sponsorship of an industry trade group), premium rates and coverage form are developed.

. Promotion of the new insurance program within the industry begins usually with very competitive (versus the then-going rate) pricing designed to attract a large number of industry members to the group.

. Other insurers respond to the new competitive force and lower premiums to keep from losing their existing share of the industry's policyholders.

. After another round of price cutting, the original insurer realizes that it is losing money on the originally conceived program and asks to be replaced. If a replacement is found, the program goes on, often with more price cutting. If one is not found, the program terminates, sometimes throwing program participants into a very hostile marketplace.

Not all mass marketed insurance programs are relegated to the above scenario. Nevertheless, they are usually developed by marketing personnel whose incentives to increase insurance sales often override sound pricing and other underwriting considerations. Further, such programs do not easily permit consideration of any of the self-insurance alternatives (discussed in Chapter IV), because the organizers and promoters are in the business of selling insurance. In contrast, group insurance buying pools more readily seek alternatives when their joint insurance program becomes uneconomical or unavailable.

When mass marketed insurance programs are operating in a normal market environment, they offer insurance buyers savings comparable to group insurance buying pools.

### Assigned Risk Pools

Many states have developed assigned risk pools as a vehicle liability insurance coverage source of last resort. Insurance buyers, unable to obtain coverage in the open marketplace, apply to the assigned risk pool for coverage. The assigned risk pool is made up of all of the insurers that offer automobile liability insurance in the state. The amount of their insurance writings in the state dictates the level of

their participation in the pool. The insurers' participation in these programs is mandatory.

Briefly, the operations of an assigned risk pool are:

- An insurance buyer, unable to find automobile liability insurance in the standard marketplace, submits an application to the assigned risk pool office.

- The pool's office applies its rating tables to the information included in the application and develops a premium. Usually, these premiums are substantially higher than those available in the standard insurance marketplace.

- Once the insurance buyer accepts the quote, an insurer is assigned to provide service, e.g., issue a policy, collect premium, pay claims, etc.

While such pools typically offer insurance at high premium rates and with low coverage limits, they do guarantee that insurance will be available. They do not exist in all states and some that do exist are not required to respond to commercial insurance situations.

Because of the relative unavailability of insurance in a hard insurance market, transit systems may find assigned risk pools as their only source of coverage. However, because of their typically high premiums and low coverage limits (often lower than $300,000 per occurrence), they do not represent a long-term option for the insurance buyer.

### Market Assistance Programs

Like assigned risk pools, market assistance programs are developed by insurers to serve an industry group having difficulty purchasing insurance of some type. Market assistance programs are, however, voluntary in that no participating insurer must agree to provide insurance for a given percentage of the applicants or, indeed, for any applicant at all. Such programs are purported to be demonstrations of the insurance industry's social responsibility to allow a particular insurance buyer a reasonable opportunity to find coverage.

Typically applications to the program are received in a central facility and forwarded to several insurers at a time. If all of these decline, the application is sent to several more insurers and so on until all participants have seen the application or until one insurer provides a quote. While market assistance programs have varied success, their voluntary nature does not assure an insurance solution in a truly hard insurance market.

## CONTENT AND STRUCTURE OF AN INSURANCE POLICY

This section reviews the general content and structure of a liability insurance policy and provides suggestions on how to review your policies.

### Standard Provisions of a Liability Insurance Policy

All liability insurance policies will be different, and must be read carefully to fully understand their content. It is useful to begin with a review of the structure of an insurance policy. Most policies include four types of standard provisions:

- declarations
- insuring agreement
- exclusions
- conditions

#### Declarations

The first section of a liability insurance policy, called the declarations, serves an important identification role. Information included in the declarations specifies:

- the policy number;
- the type of policy;
- the name and address of the insured and additional insureds, as appropriate;
- the policy period, including both the inception and termination dates;
- the limits of the insurer's liability for each type of coverage included in the policy (which may be stated on an aggregate or per occurrence basis);
- the deductibles associated with each type of coverage; and
- the premium.

The transit system would be the named insured on the policy and may include the officers and employees as additional insureds. Some policies may require the additional insureds be included by endorsement.

**Insuring Agreement**

The insuring agreement is the basic agreement between the insurer and the transit system, the heart of the liability insurance policy. While the specific provisions will differ among policies, important similarities exist. In particular, all liability insurance policies promise to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which the insurance applies..."

This phrase makes a number of important points. For example, that the insurer compensates (and does not reimburse) the insured for losses that it is legally obligated to pay. This limits coverage to those amounts affected by formal legal action, where the insured has been charged, found guilty of a tort, and had judgment entered against it. In practice, the insurer may arrange a settlement with the insured. Settlements are generally arranged when:

- the facts of the claim indicate liability on the part of the insured and the defense costs would add significantly to the costs, or
- the claim is small and defense costs may exceed the claim.

As part of the insuring agreement, the insurer has the right and duty to defend any suit against the transit system and to make investigations and settlement of claims or suits as it deems expedient. As part of these obligations the insurer pays the costs to cover:

- claims investigation
- defense
- settlement of claims
- policy limits of insurance
- appeal and release of attachment bonds
- bail bonds (for automobile accidents)
- first aid at accidents
- expenses incurred by the transit system at the insurer's request (e.g., attendance at hearings or trials).

**Exclusions**

This part of the liability insurance policy enumerates the property and risks that are not covered by the policy. Many exclusions can be covered by endorsements.

As with other parts of a policy, exclusions will differ from one policy to another. In general, four types of exclusions can be anticipated.

. Hazards covered by other insurance (e.g., directors' and officers' and errors and omissions coverage may be excluded and require separate coverage). Other common examples of hazards covered by other insurance include:

  - Comprehensive general liability coverage may not cover damage from automobile accidents, consequently automobile liability insurance is purchased.

  - Liability voluntarily assumed. Contractual liability or owner's and contractor's liability coverage may need to be purchased to overcome this exclusion.

  - Liability from workers' compensation unemployment or disability benefits law. Coverage in this area may be obtained through commercial insurance or through self-insurance programs.

  - Property damage for owned, occupied or rented property. Fire and other property damage insurance is generally obtained to cover these risks.

. Catastrophic hazards such as war, riot, civil commotion, and mob action.

. Inverse condemnation and public construction.

. Damages from acts done intentionally or from willful violation of penal statute or ordinance.

**Conditions**

Conditions define the relationship between the transit system and the insurer and more explicitly outline the extent of coverage under certain circumstances. Areas that may be addressed in the conditions section of a liability insurance policy include:

. the basis for adjusting premiums;

. the insurer's right to inspect the transit system's property;

. the insurer's right to audit certain records;

. the provisions (including methods and terms) for policy cancellation;

. the responsibilities of the transit system, e.g., to correct hazards and to assist in the settlement or defense of claims;

. the identification of the policy as primary unless stated otherwise;

- the coverage limits required to conform to the motor vehicle financial responsibility; and

- the provisions for automatic liberalization of the policy if the insurer changes rules or broadens endorsement with the same premium.

**Reviewing an Insurance Policy**

A transit system's risk manager or person designated responsible for insurance matters has the important responsibility to read and understand all insurance policies. This can be a challenging responsibility because of the language, content and structure of the insurance policies.

The language used in insurance policies is often obscure and difficult to read. There is a considerable amount of jargon and language that is unique to the insurance industry. Insurers insist on keeping the old wording because they claim that courts have made interpretations and rulings that could be altered with new language.

Another aspect of insurance policies that makes them difficult to read and understand is that statements made in one part of a policy may be altered or negated in another part by a special form or an endorsement. Often a single subject may be treated several times in a policy and be treated differently in each case.

A number of simple steps can be taken to ensure that an insurance policy is clearly and fully understood. It is useful to follow these steps for all policies.

- Make at least two copies of the insurance policy and store the original in a safe, fireproof place. It may be needed for future reference or possibly for legal proceedings and should not be marked on.

- Carefully review one copy and write any notes you may have regarding special provisions, questions, and clarifications.

- Cut up the second copy and reconstruct the policy by type of coverage and section of the policy (i.e. declarations, insuring agreement, exclusions and conditions) to obtain a complete summary of each area covered.

- Make sure that no endorsements or sections of the policy are missing or have been excluded.

- Neatly cross out sections that are canceled by endorsement, but do not discard any part of the policy.

- Mark all changes from endorsements and note the number of the endorsement.

- Review the marked and reassembled version of the insurance policy to understand the coverage and provisions of your policy.

After performing the above activities it is useful to ask yourself a number of questions such as those listed on Exhibit V.3. Having reviewed your policy as suggested and considered these questions, you may also find it useful to prepare a simple summary sheet for your policy like the example shown in Exhibit V.4.

## PURCHASING COMMERCIAL INSURANCE

Once a transit system has decided which types of risks to transfer and how much of each risk to retain, it faces another important decision of insurer selection. This final section of Chapter V addresses three topics relevant to purchasing commercial insurance: selecting an approach for purchasing insurance, screening insurers, and presenting your transit system to insurers.

### Selecting an Approach for Purchasing Insurance

The approach used to purchase insurance can have important effects on its availability and cost. The two approaches generally considered for purchasing insurance are unrestricted, or open competition, and controlled competition.

#### Unrestricted Competition

Unrestricted competition or open bidding for insurance requires that 1) the transit system prepare detailed specifications for procuring insurance, including coverage terms and conditions, services and costs; 2) Requests for Proposals are made available to insurers; 3) insurers prepare proposals in response to the specifications; and 4) the transit system evaluates the proposals based on specified selection criteria and makes a selection. Generally, price is considered as the most important selection criteria with the low bid insurer selected.

Unrestricted competition is widely used in public sector procurement of insurance. The survey of transit system risk management practices conducted in conjunction with the preparation of this manual revealed that 68 percent of the respondents purchase liability insurance through the competitive bid process and of these, 69 percent accept bids annually, 16 percent accept bids every three years, and 14 percent accept bids at some other interval. When asked to rank insurer selection criteria, cost was generally ranked first, scope of coverage was ranked second, and services provided was ranked third.

## EXHIBIT V.3

## REVIEWING YOUR INSURANCE POLICY

- Are the policies complete? Are all of the pages and references sections included?
- Are there any ambiguous clauses that should be clarified by your broker or insurer?
- Have all verbal interpretations been confirmed in writing?
- Does the policy period of the umbrella coverage coincide with those of all underlying coverage?
- Are underlying limits the same as those referenced in the umbrella coverage?
- Are all appropriate entities listed as named insureds?
- Are all terms adequately defined?
- For property insurance is all real and personal property covered? If not, identify what is missing and determine whether it should be insured.
- Are areas excluded that should be covered by endorsement?
- Is the cancelation date at least 30, and preferably 60 or more days after notice?
- Are the claim reporting requirements reasonable?
- What are the provisions for cancelation and what is your recourse?

Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610.

# EXHIBIT V.4

## CHART OF PRIMARY LIABILITY INSURANCE

| | | |
|---|---|---|
| DECLARATIONS | Named Insured | Product Holding Co., Product Manufacturing Co., and Product Sales Co. and/or subsidiary, affiliated, or associated companies as are now, have been, or will be constituted. |
| | Additional Insureds | Any executive officer, director or stockholder, while acting in duties as such. At the option of the named insured, any employee. |
| | Insurer | Terminal Liability Insurance Co., policy #ABC555666. |
| | Broker | Frank B. Smersh & Co. |
| | Term | April 1, 1981 to April 1, 1983. |
| | Limit | $1,000,000 per occurrence and aggregate products. |
| | Retention | $25,000 property damage liability. |
| | Annual Premium | $123,456. |
| COVERAGE | General | Legal liability for bodily injury or property damage arising out of an occurrence. "Occurrence" is defined as "an accident, including injurious exposure to conditions which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured." |
| | Personal Injury | A. False arrest, detention or imprisonment, malicious prosecution.<br>B. Libel, slander, defamation or violation of right of privacy.<br>C. Wrongful entry or eviction or other invasion of right of private occupancy. |
| | Contractual | Bodily injury or property damage assumed by any written contract and caused by an "occurrence." |
| | Defense | Legal defense costs are covered in addition to the limits of liability, but company will defend no suit after limits of liability have been exhausted. |
| EXCLUSIONS | General | Automobiles, aircraft, watercraft, liquor liability, property in custody, design error, product withdrawal, non accidental, pollution, contractual liability. |
| | Personal Injury | Contractual liability, willful violation of law, utterances or publications prior to inception of policy, statements known to be false. |
| | Contractual | Professional services of architect, engineer, or surveyor; liquor liability; property in custody; lack of performance of contract; product withdrawal; damage to alienated premises. |
| CONDITIONS | Territory | U.S. and Canada. Products covered worldwide in suit brought in U.S. or Canada. |
| | Cancellation | Insurer must give 30 days notice of cancellation. |
| | Other Insurance | This policy contributes with other insurance. |
| | Notice of Loss | Occurrences must be reported as soon as practicable. Claims must be forwarded immediately. |

Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610, 1988, Topic A-6.

Open bidding is used because it supposedly secures the specified insurance coverage and limits at the lowest cost and because it is viewed as being free from favoritism and political pressure. Although widely used this approach is viewed as having far more disadvantages than advantages for purchasing insurance. Critics argue that open bidding may be the best way to purchase manufactured products but that it is not necessarily the best way to purchase services.

The disadvantages of unrestricted competition address the importance of factors other than the cost of insurance, including the quality of services, the stability of the insurer, the manner in which claims are settled, and the need for understanding by the insurer of risks. More specifically some of the disadvantages of unrestricted competition include:

- The selection of an insurer based solely or largely on low bid is often a short-sighted and potentially uneconomical decision. Other important factors should also be considered in the selection process such as the financial stability of the insurer, the professionalism of the broker, and the quality of claims handling and other services provided by the insurer.

- In a hard insurance market, organizations that have regularly conducted open bidding usually have the most difficulty securing coverage. Insurers will often have greater commitment to their more stable clients and to organizations for which they perceive the potential of long term relationships.

- Some insurers do not want to spend the time, effort, and resources required for competitive bidding when the competition is unrestricted since the chances of success seem very small. Often qualified, cost effective insurers will not submit a bid in an open competition although they may bid if approached differently.

- The development of detailed specifications and the requirement that all insurers conform to the specifications inhibits insurers from presenting alternative approaches and options. All insurers must comply or be eliminated from consideration, regardless of the benefits of their alternative approaches.

While many of these criticisms of open competition may be valid, transit systems should annually examine and test the insurance market and should work with professionals that are familiar with both the insurance and transit industries to ensure that their commercial insurance coverage is appropriate and cost effective.

**Controlled Competition**

Controlled competition, an approach generally recommended for procuring insurance, takes six or more months and includes the steps listed in Exhibit V.5.

In the last step it is important that the transit system consider, along with price, the breadth of coverage and the ability of the insurer to service the account. If coverage is too restrictive and/or required services, such as claim handling, are

EXHIBIT V.5

## STEPS FOR PROCURING INSURANCE THROUGH LIMITED COMPETITION

1. Requests for written proposals are sent to qualified agents and brokers. A newspaper advertisement soliciting interest in placing the transit system's insurance can precede this step.

2. Conceptual proposals are received and evaluated. Insurers may deviate from each other since highly detailed bid specifications are not provided.

3. Firms offering the best conceptual proposals are interviewed.

4. One to three organizations are selected to approach the insurance marketplace to obtain actual insurance quotations. If more than one agent or broker is authorized, each should be assigned specific insurers since it is important not to have more than one agent or broker contact the same insurer.

5. Detailed bid specifications are prepared and released to the selected agent(s) and broker(s). The specifications should be prepared by the risk manager or a consultant who is thoroughly familiar with the needs of the transit system and with the insurance community and marketplace.

6. Insurance quotations are received and evaluated.

7. The quotation offering the best combination of coverage, service and cost is selected and insurance binders are requested before the anniversary date for the policy.

Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610.

inadequate, the low premium cost is probably not reflective of the true cost to the transit system. Overly restrictive coverage forms can produce unexpected, uninsured claims, and inadequate claims services can draw transit management into situations like appeasing disgruntled claimants who have received inadequate attention from the insurer's claims adjustors.

### Timing for Bidding Insurance

Controlled competition should not be bid annually. Insurers, like insureds, want stability. This is attained in part through longer term relationships, in particular since the first year often includes added insurer costs for loss history analysis, claims review and on-site inspections. Changing insurance companies and agents annually hinders stability and limits the familiarity and knowledge needed in most business relationships.

Prudent insurance buying practices suggest that the insurance marketplace should be regularly reviewed and that insurance should be formally procured every three to five years. Reasons to change insurers, agents or brokers include:

- dissatisfaction with the current situation;
- substantial cost increases;
- substantial changes in your operations;
- inadequate service and unresponsiveness to the transit system's risk management needs; and
- decreased financial stability of the insurer.

Long term relationships with insurers, brokers and agents should not be left unchallenged by competition since complacency may develop which may reduce the quality of services and level attention given to the transit system's insurance program.

### Screening Insurers

Insurers should be screened and selected based on the following criteria:

- financial stability;
- historical experience of the firm;
- minimum annual premium volume in the critical lines of insurance;
- professional qualifications of the staff;

- experience with accounts of similar size and exposure;

- reputation for providing services such as loss prevention and claims management; and

- agreement to provide adequate reports on at least an annual basis.

The first criteria listed above, financial stability, is often given the greatest consideration since insurer solvency is of utmost importance. Most organizations use reports published by A.M. Best which evaluate the managerial ability and financial size of insurers. Best's reports rate insurers based on characteristics including the skill and experience of management, underwriting practices, the adequacy of reserves, the adequacy of resources to absorb unusual shock losses, and the soundness of investments.

The ratings are divided into two categories presented in Exhibit V.6. For example, Best's rating for a particular insurer might be B+:X which means that its managerial rating is very good and its adjusted policyholders' surplus is between $500 to $750 million. About 25 percent of the companies that Best's reports on are not eligible for a Best's rating. These companies are coded with the reason for their ineligibility for rating.

As suggested above, financial stability should be only one of a number of criteria used to screen and select an insurer. It is particularly important to bear in mind that measuring financial stability is not a precise science and that the rating provided by A.M. Best is not equivalent to a warranty.

### Presenting Your Transit System to Insurers

It is important to provide information to help your agent or broker present your transit system to insurers. This is accomplished by assembling and preparing information in a neat and concise format that clearly and thoroughly presents your system, its financial posture, risk history, and safety and loss programs. Information may be presented in brochures, or a well organized notebook. Material such as the following may be included:

- organizational documents including articles of incorporation, bylaws, and financial statements;

- explanation of operations describing the fleet size and type, annual miles traveled and annual passengers carried;

- a matrix with losses incurred each year for the past three to five years and the rate of actual payment;

- a summary that relates losses to exposures (i.e. workers' compensation benefits to payroll and fire losses to property values);

## EXHIBIT V.6

## A.M. BEST'S INSURER RATINGS

RATINGS OF UNDERWRITING PRACTICES AND ECONOMY OF MANAGEMENT

| | |
|---|---|
| A+ . . . Superior | A . . . Excellent |
| B+ . . . Very Good | B . . . Good |
| C+ . . . Fair | C . . . Uncertain |

RATINGS OF FINANCIAL SIZE

| Class | Adjusted Policy Holders Surplus (Millions) |
|---|---|
| I | Up to $ 1.0 |
| II | 1 to 2 |
| III | 2 to 5 |
| IV | 5 to 10 |
| VI | 10 to 25 |
| VII | 25 to 50 |
| VIII | 50 to 100 |
| IX | 100 to 250 |
| X | 250 to 500 |
| XI | 500 to 750 |
| XII | 1,000 to 1,250 |
| XIII | 1,250 to 1,500 |
| XIV | 1,500 to 2,000 |
| XV | 2,000 or more |

Source: Public Risk and Insurance Management Association, "United Way of America Risk and Management Guide for Nonprofits," R. Bradley Johnson, Principal Author, 1987.

- a description of large losses (over $10,000) and your measures to prevent future occurrences of such losses;
- information on your transit system's reserves for losses;
- forecasted losses specifying claims-made or occurrence basis;
- a summary of the replacement value of all real and personal property including descriptions and as appropriate, maps; and
- a summary of business interruption values from the loss of facilities.

It is important that accurate information be included in the materials prepared for prospective insurers. Some organizations retain professional assistance to help with the preparation of these materials, particularly where forecasting is required. The use of outside assistance is discussed in Chapter VII of this manual.

The information pertaining to claims history is probably the most important to insurers since it identifies the nature and extent of exposure, identifies areas where loss control may be needed, provides data for feasibility studies for financing alternatives, and presents the soundness of the transit system as a risk.

# VI. CLAIMS AND CRISIS MANAGEMENT

This chapter includes two sections. The first section describes the requirements for maintaining information to support risk management, including processing, adjusting, investigating, and when necessary, litigating claims; the second section discusses the requirements for preparing for and responding to a crisis.

Many transit systems have historically defined the role of their risk managers too narrowly, giving them too few responsibilities and too little understanding and control of risk administration. Often too, the responsibilities for risk management are not clearly delegated, particularly in smaller transit systems where responsibility for risk management may be held by the general manager or shared with the finance director and manager of operations. An important objective of this chapter is to present a number of areas that should be more effectively managed and administered by transit system risk management programs.

## CLAIMS MANAGEMENT AND LOSS RECORDS

Managing claims and maintaining loss records are important responsibilities of a transit system's risk manager (or person with responsibility for risk management). While most organizations retain outside contractors to assist in many areas of risk administration and management, a transit system employee must oversee and be thoroughly informed about all aspects of the program. The person responsible for risk administration should:

- ensure prompt, efficient and careful handling of all claims;
- promote and facilitate cooperation between those persons handling claims and the staff and line personnel of the transit system;
- identify and be involved with the disposition of any politically sensitive claims to ensure that the program is fair and objective;
- stay well informed and up to date on loss reports and records to understand the financial posture of the risk management program;
- provide routine quality control by monitoring claims-related costs, including allocated expenses such as investigation and litigation, and reviewing all reports for errors (e.g., duplication of claims or payments, failure to obtain releases, and payment of frivolous claims);
- make sure that the claims handling and loss records are regularly audited; and

- oversee an aggressive, straightforward, and well run claims administration loss reporting program that seeks to limit the severity and financial impact of claims on the transit system.

## Claims Management

Claims adjusters are very important to the cost and effectiveness of a transit system's risk management program. The adjusters are a key point of contact between the transit system and claimants. Their skills, ability and demeanor often influence the outcomes, including the costs, of claims. A good claims adjuster knows how and when to initially contact claimants and when to conduct follow-up meetings, what information to obtain, when to pursue a settlement, how much to offer and settle for, and how to set reserves for claims, considering the total eventual cost.

The most important part of claims management is overall philosophy. One approach is to admit some responsibility for the loss and settle the claim quickly. This minimizes defense costs, and may result in smaller loss settlements, but may attract a lot of unsubstantiated claims. Another approach is to defend aggressively against all claims. This increases defense costs, may result in settlements with smaller or no loss payments and deter many claims in the first place. A middle-of-the-road approach is another option. In any case, the decision should rest with the transit system, not the insurance company.[1]

There are three common sources of claims adjusting services: insurance companies, independent adjusters, and in-house employees. A fourth option that is sometimes used is a combination approach where small claims are handled in house and larger, more complex claims are handled by an insurance company or independent adjuster. The three initial options listed are described below.

### Insurance Companies

Insurers are often responsible for adjusting liability and workers' compensation claims. Our survey of transit industry risk management practices indicated that overall about one-third of the respondents had their liability claims adjusted by their insurer. The use of insurers for this responsibility declined with transit system size with about 53 percent of the smallest systems (less than 50 vehicles) and only 4 percent of the largest systems (over 500 vehicles) having their insurer adjust their claims.

Once a claim is reported the insured has little involvement with or control over the progress of the claim since the insurer has final authority on the disposition of claims. However, you can attain some degree of control by taking such actions as:

---

[1]Margaret W. Tiller, "Retaining Risk," Public Risk, January/February 1987, Vol. 1, No. 2, p. 11.

- requesting that the insurer advise the transit system in advance of all pending settlements or denials which exceed specified amounts;

- requesting that the claims department advise the risk manager of material changes in reserves of individual claims and settlement offers received from claimants or their attorneys;

- obtaining the right to review all open claims files by including this requirement in your insurance policy; and

- endorsing the transit system's insurance policy to require notice of loss only after the occurrence is known by the risk manager or other specified transit system representative.

Transit systems should not hesitate to make these requests of their insurers since the insurer's actions will directly and significantly affect the overall cost of risk management.

**Independent Adjusters**

Independent claims adjusting firms provide claims adjusting services. These organizations, retained solely to perform claims handling services, are hired directly by the transit system and tend to be more responsive to the system's needs and priorities than an insurer. Often independent claims adjusters specialize in particular industries or in self-insured programs which make them better equipped to handle and control claims than a multiple line adjuster.

Independent claims adjusting is widely used by many public and private organizations, in particular organizations that self-insure or retain a significant part of their risk. In our survey we found that overall about 36 percent of the respondents use independent claims adjusting firms and that the use of these firms did not seem to be significantly affected by the size of the transit system.

Independent adjusting firms offer a number of important benefits including:

- providing an objective basis for claims administration costs since their annual fees can generally be estimated and budgeted based on projected losses, premiums or number of claims;

- eliminating recurrent hiring and retraining of employees which has significant financial and administrative costs;

- providing well-trained professionals with diverse skills and specialties that can seldom be afforded by most organizations; and

- ensuring independence since the claims adjuster is not an employee of the transit system, a benefit that is particularly relevant when adjusting workers'

compensation claims, property damage claims, and claims from claimants with political connections.

Long-term relationships are often established with a claims adjuster who becomes knowledgeable about the transit system and its risk management program. Yet, if necessary, a different firm can be retained if the relationship is not satisfactory.

Firms that provide claims adjusting services may also provide any or all of the following risk administration services:

- Loss adjusting. The key to these services is that they address adjusting and not simply paying benefits. Loss adjusting includes investigating, reporting and following up on claims; preparing and maintaining complete and accurate files; administering payments which requires negotiating settlements, establishing reserves, and maintaining records of payments; communicating with doctors, attorneys and excess insurers, and controlling their costs, as appropriate; and pursuing subrogation recovery, when warranted.

- Loss runs. These reports are normally computer-prepared reports that may be specified by the claims adjuster, by the risk manager or by packaged programs from a computer firm. Some organizations retain an independent firm to handle and maintain their loss runs to establish independence from the claims adjusting firm as a safeguard against the disruption of their records if they change claims adjusting firms.

- Legal services. Often this service is included only for workers' compensation claims. Transit systems may have their claims adjuster coordinate the claims-related legal services of both in-house and private attorneys and may periodically look to their adjuster for legal advice.

- Loss control. Generally transit systems have well developed in-house loss control programs, in particular for their vehicle operators and maintenance workers. Claims adjusters often provide a wide range of loss control services that may focus on special areas and may include initial no-cost surveys. These programs can be beneficial and should be pursued when they are cost effective.

- Employer reports. Required reports to governmental authorities may be prepared by the claims adjuster such as workers' compensation incident reports and OSHA reports.

- Rehabilitation services. Many workers' compensation programs include programs to rehabilitate badly injured employees. This includes both medical and vocational rehabilitation services that can be provided on an as-needed basis by the independent claims adjuster.

These services may also be obtained from insurers and independent companies that specialize in one or more risk administration support programs.

There are a number of methods used to remunerate adjusting firms. For example, fees may be billed on a time-and-expense basis with a not-to-exceed limit; this approach is viewed as the fairest by some experts. Alternatively, fees can be based on an annual flat fee or a flat fee per claim basis; these approaches require accurate loss history data or a reconciling mechanism. Programs that are not self-insured may base fees on a percent of premium. Transit systems should avoid paying fees based on a percentage of incurred or paid claims since this builds in incentives to overpay or over-reserve for claims and is likely to result in higher overall costs for risk management.

**In-House Adjusters**

Some transit systems may decide to have an in-house staff of claims adjusters. Generally, only very large organizations that are largely self-insured pursue this option. Our survey of transit industry risk management practices revealed that overall only about 16 percent of the respondents have claims adjusted by the transit system. Looking more closely at the survey results a clear relationship between system size and in-house claims adjusting is apparent:

- 2.5 percent of the respondents with less than 50 vehicles use in-house claims adjusters;
- 7.9 percent of the respondents with 50 to 99 vehicles use in-house claims adjusters;
- 18.6 percent of the respondents with 100 to 249 vehicles use in-house claims adjusters;
- 35.3 percent of the respondents with 250 to 499 vehicles use in-house claims adjusters; and
- 53.8 percent of the respondents with more than 500 vehicles use in-house claims adjusters.

As suggested above, some organizations pursue a combination approach where smaller, more routine claims are handled by in-house adjusters and larger, more complex claims are handled by an outside service. Alternatively, a transit system can manage the claims adjusting function internally while contracting for adjusting services through local or national claims adjusting and risk management service firms.

Some of the advantages of this approach over the two discussed above include:

- transit system employees can be trained to approach risk management in a consistent manner that complies with local ordinances, transit system policies and procedures, and management philosophy;

- the person responsible for risk management will have greater control and authority over the handling of claims and the resolution of discretionary matters;

- the transit system can specify the data and report formats for loss and other risk management data and can better ensure the immediate availability of the data;

- various risk management services can be performed by transit system employees in risk management as well as its legal staff, and outside services can be retained on an as-needed basis in response to specialized needs;

- the need to inform and advise contract adjusters and insurer personnel of public sector requirements for risk management is eliminated or significantly reduced;

- claims run information can be routinely screened and reviewed for completeness and accuracy so there is no risk of loosing control over the data; and

- changes and improvements to the risk management program recommended by third party auditors can be pursued and implemented more readily.

A significant barrier to in-house claims management and risk administration is the investment of both time and money required to change from an insurer or independent adjusting firm. The transit system must invest in personnel, training, computer equipment, and software which may be purchased as a package or customized. This transition requires a long-term commitment since it is most effectively accomplished if it is pursued slowly through a gradual expansion and phased approach.

### Loss Records

Complete, well organized and readily accessible loss records are essential to an effective risk management program. These records serve as the critical links between loss prevention, risk financing and claims administration. The person responsible for risk management must know the frequency, severity, causes, and costs associated with all losses. Regular review of loss records enables a transit system to:

- plan an effective loss prevention program by identifying the strengths and weaknesses of its current loss control initiatives;

- provide reports and records to various local, state and federal authorities that require information on safety and claims;

- make decisions on risk financing, in particular how much and which types of risks to retain and which to transfer;

- obtain lower insurance rates by presenting clear and accurate records of loss history that demonstrate the risk position of the transit system; and

- establish reserve guidelines that are realistic rather than being subject to unnecessarily high reserves which result in higher premiums for commercial insurance.

Loss records should be maintained, although not necessarily prepared by the person responsible for risk management. The data should be organized in a manner that is useful to the risk manager and other management personnel of the transit system, not for the ease and convenience of the insurer or claims adjuster.

Loss records should be readily available to the transit system and up-to-date since inaccessible and out-of-date information cannot be meaningfully used in effective decision-making. It is important that the transit system avoid becoming dependent upon an insurer or claims adjuster since this dependence makes it difficult for the transit system to change insurers or adjusters or to take corrective actions in the risk management program.

Our survey of transit industry risk management practices indicated that risk-related financial data and loss records are often maintained by the transit systems as well as the insurer, the insurance agent, or the claims adjuster. About 59 percent of the respondents indicated that they maintain their loss records and other financial data. The systems that have their data maintained by an outside entity indicated that they receive regular reports, largely on a monthly or possibly quarterly basis. A few transit systems stated that they receive reports semi-annually or annually.

Again, transit system size appears to influence data maintenance with 42.5 percent of the systems with less that 50 vehicles maintaining their loss records and all of the transit systems with 500 or more vehicles maintaining their loss records.

**Developing Loss Records**

It is important that you carefully consider the transit system's needs for loss records and related financial data. Several simple rules of thumb should initially guide the development of reports:

Determine the data you want. Consider the level of detail needed. Too much data is as useless as too little. Where possible data should be summarized and the summaries should be tailored to the needs of the people who will review and monitor the reports. The risk manager should specify the data and report format and not have this dictated by an outside organization

- Find the best source. Loss and related data may be assembled by a number of different organizations and individuals such as the transit system's insurer, independent claims adjuster, in-house adjusters, broker or computer service firm. Transit system employees should clearly understand the importance of their cooperation and participation whenever they are expected to report loss related data. This may be for workers' compensation, liability, or property damage claims.

- Keep the process simple. Leave out any unneeded or seldom used data, determine the simplest way to get the data and pursue this course. Data maintenance is cumbersome and should be streamlined and simplified whenever possible.

- Record all losses. Regardless of size, all losses should be recorded. This information is essential for planning loss control programs for small and large losses and is critical to decision making regarding risk retention and risk transfer.

- Review loss records regularly. The person responsible for risk management should stay current and fully aware of the information in the loss records. Review of records should include examining the data for trends, errors, and the overall effectiveness of the risk management program.

### Loss Record Content

Each transit system will want to carefully consider the content of its detailed loss reports and decide on their format. Workers' compensation claim reports, unlike general liability claim reports, are prescribed by law and the risk manager must comply with reporting requirements. Exhibit VI.1 suggests the types of data that should be included in loss reports for workers' compensation, liability, and property claims. The Exhibit also presents a suggested cash flow summary that can be prepared by type of claim and for all claims.

You will want to have a number of summary reports prepared as well as the detailed loss reports on the status of individual claims. Exhibits VI.2, VI.3 and VI.4 illustrate the types of summary reports that can be considered. These reports present total losses by type of loss for a five year period, stratify losses by their claim size, and identify the large losses incurred by the transit system.

### Computerization of Loss Records

As automation becomes less complicated and expensive it is being more widely considered in many data intensive areas, including risk management. However, our survey results indicate that transit system size is a factor in whether loss records are automated or manual. About 40 percent of the smallest transit systems have computerized loss records as compared to 99 percent of the largest systems.

## EXHIBIT VI.1

## LOSS REPORT CLAIM DATA

| WORKERS COMPENSATION REPORT DATA | LIABILITY REPORT CLAIM DATA |
|---|---|
| Claim #, name, age, years of service | Date, location, and time |
| Cause | Name of claimant |
| Result | Who was present |
| Date and time of day | Description of incident |
| Location (plant and department) | Amount: |
| Foreman (or department) | Probably total (incl. reserves) |
| Amount paid and reserved | Paid last month |
| Loss adjustment expense | Paid to date |
| Legal expense | |
| Time lost | |
| Open or closed | |
| Recovery from insurance or others | |

CASH FLOW SUMMARY

| Year | Total Incurred | Amount Paid 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|---|
| 1981 | 125,120 | 56,018 | 27,213 | 14,212 | 16,812 | 12,811 |
| 1982 | 85,822 | | 29,415 | 28,618 | 15,419 | 6,412 |
| 1983 | 77,112 | | | 22,416 | 21,400 | 15,816 |
| 1984 | 88,839 | | | | 45,189 | 21,612 |
| 1985 | 112,408 | | | | | 33,899 |

Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610, 1988, Topic D-8.

## EXHIBIT VI.2

## FIVE YEAR SUMMARY OF PAST LOSSES

1. Workers Compensation

| Year | Number of Claims | Amount Paid | Amount Reserved | Total Amount |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| Total | | $ | $ | $ |
| Annual Average | | $ | $ | $ |

2. General Liability

| Year | Number of Claims | Amount Paid | Amount Reserved | Total Amount |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| Total | | $ | $ | $ |
| Annual Average | | $ | $ | $ |

## EXHIBIT VI.2

## CONTINUED

3. Professional Liability

| Year | Number of Claims | Amount Paid | Amount Reserved | Total Amount |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| Total | | $ | $ | $ |
| Annual Average | | $ | $ | $ |

4. Automobile Liability

| Year | Number of Claims | Amount Paid | Amount Reserved | Total Amount |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| Total | | $ | $ | $ |
| Annual Average | | $ | $ | $ |

## EXHIBIT VI.3

## LOSS STRATIFICATION

| Line of Insurance/Self-Insurance: | | | | |
|---|---|---|---|---|
| Time Period: | | | | |
| Stratification Level | Number of Claims | Amount Paid | Amount Reserved | Total In Layer |
| Less than $999 | | $ | $ | $ |
| 1,000– 2,499 | | $ | $ | $ |
| 2,500– 4,999 | | $ | $ | $ |
| 5,000– 9,999 | | $ | $ | $ |
| 10,000– 24,999 | | $ | $ | $ |
| 25,000– 49,999 | | $ | $ | $ |
| 50,000– 74,999 | | $ | $ | $ |
| 75,000– 99,999 | | $ | $ | $ |
| 100,000–149,999 | | $ | $ | $ |
| 150,000–199,999 | | $ | $ | $ |
| 200,000–249,999 | | $ | $ | $ |
| 250,000–299,999 | | $ | $ | $ |
| 300,000–349,999 | | $ | $ | $ |
| 350,000–399,999 | | $ | $ | $ |
| 400,000–449,999 | | $ | $ | $ |
| 450,000–499,999 | | $ | $ | $ |
| 500,000–549,999 | | $ | $ | $ |
| 550,000–599,999 | | $ | $ | $ |
| 600,000–649,999 | | $ | $ | $ |
| 650,000–699,999 | | $ | $ | $ |
| 700,000–749,999 | | $ | $ | $ |
| Over 750,000 | | $ | $ | $ |

## EXHIBIT VI.4

## LARGE LOSS SUMMARY

| Line of Insurance/Self-Insurance: | | | | | |
|---|---|---|---|---|---|
| Time Period: | | | | | |
| Depicts All Losses Above: $ | | | | | |
| Date of Loss | Status (Open or Closed) | Description of Loss | Corrective Actions | Amount Paid | Amount Reserved |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |

An important decision regarding automation of loss records is who should be responsible for developing and maintaining the data. The alternatives include an insurance company, an independent claims adjuster, a computer service firm, an in-house mainframe computer, or an in-house microcomputer. The last option is becoming increasingly popular as the technology for microcomputers develops. Often risk managers will develop their own programs on these systems and attain a level of independence and efficiency not achievable in the past.

## MANAGEMENT OF CRISIS SITUATIONS

Sooner or later every organization will have a crisis where physical or human loss occurs. Lightening may strike literally and destroy a transit system's garage or an accident may happen where one or more people are injured or killed. Sooner or later every transit system will experience perhaps a broken hip from the fall of an elderly rider. These crises will test that organization's strength--its strength in planning and preparedness and its strength in emergency or crisis response.

The purpose of this section is to assist the managers of large and small transit systems in preparing a plan of action to deal with a crisis and to implement and operate that plan smoothly and professionally.

### Development of a Crisis Plan

A crisis is an unstable or unknown and undesirable situation. To bring stability a plan should be prepared to address smoothly as many of the manageable portions of a crisis as possible. Top management should appoint an individual to assemble a disaster plan.

#### Assessing Risks

Developing a plan for the crisis situation first begins with understanding the risks of the type of system being operated. In Chapter II of this manual, a methodology for identifying the risks of a transit system is presented. It is important to examine the risks of the system to understand what types of crisis may occur. Risk evaluation will indicate what might happen and where. For example, if the transit system is involved only in local transportation, all risks will be locally based and your crisis plan will require only a local crisis management team. If the system is involved in longer distance service, the crisis plan should indicate a travel plan for the crisis management team to the most distant destinations of your service area.

After the risk evaluation process has been established, an investigation should be conducted for pre-existing crisis intensification problems, such as previous negative press on issues relating to your operations or management, or a general negative community image. If conditions exist, the plan will need to address them from the beginning.

**Establishing a Crisis Team**

The next element of the plan, after risk evaluation and an analysis of pre-existing conditions, is a matching up of crisis team members to the needs identified in the risk management analysis and pre-existing analysis. The team members should include principal managers, key board members, and supervisory personnel possibly from cooperating agencies as well as the transit system. The team members are those individuals who will be assigned to deal with certain elements of the crisis, such as communications with the press, communications with victims and their families, and analysis of the conduct of your response to the crisis. The membership of the team includes:

- a team leader who may or may not be the spokesperson and who is available "on call" to set the plan in motion;
- a press spokesperson who will have all communications responsibilities;
- caseworkers for victims;
- special assignment individuals, such as accident scene investigators and mechanical investigators; and
- an individual to record the activities associated with the crisis and present an evaluation of the team's crisis response after the crisis is over.

The team leader should be responsible for assembling all elements of the plan into a working document. Also, the team leader should be "on call" and should be prepared to put the plan into action. To cover all contingencies, the plan should designate an alternate team leader.

The most demanding position on the crisis management team belongs to the spokesperson. This team member should have special training in public relations. The crisis team members should conduct a series of mock interviews with the spokesperson so that this person is comfortable fielding the types of difficult questions that will arise when a crisis happens.

The individuals on the team designated as caseworkers must be some of the most trusted and level-minded individuals in the transit system. The purpose of the caseworker is to help the victims and their families return as quickly as possible to a normal mode of life after the crisis occurs. The caseworker may assist victims by contacting relatives and friends, running errands, providing a new suit of clothes or performing other activities to help the victims return to their normal lives as soon as possible.

The individual responsible for evaluating the crisis response should collect information about the entire effort. This individual should keep track of who is involved in what area of the crisis, such as operations personnel or others, collect

press clippings and maintain a log of all contacts and activities throughout the process for later evaluation.

Once the team is selected each team member should develop a more refined section of the plan. The individuals dealing with the press should develop a response for the press. The individuals acting as caseworkers should develop outlines of how they will approach their task and each team member should develop an assignment that will be assembled into the crisis response plan by the designated team leader.

### Testing the Plan

Once the response plan is in place a role playing mock crisis should be conducted. The mock crisis should be coordinated with the local police, firefighters, emergency room doctors, emergency medical technicians, the Red Cross, and any other groups in your community normally associated with emergency response. The mock disaster should be carefully planned with all local emergency preparedness groups and meticulously evaluated for the performance of the team.

An element of the disaster plan which will need constant updating is a list of contact agencies and individuals. The telephone contact progression system (telephone tree) should be outlined and every team member's home telephone number should be included. All key agency contacts such as insurance and equipment manufacturers should also be specified.

## Communications

Transit management will be required to communicate in any crisis with a number of groups and individuals. They include the insurance carrier, the victims, the hidden victims such as family members and other individuals not directly involved, board members, manufacturers, governmental units and the press. The communication process in a crisis is complex in that a crisis by definition is unstable. Consequently, management must communicate clearly and they must be aware of their feelings as individuals themselves.

Careful and thoughtful communication with the following groups is essential:

. insurance providers

. victims

. hidden victims

. board and employees

. manufacturers and vendors

. governmental units

. press

**Insurance Provider**

The crisis plan should indicate who to contact regarding your insurance coverage following an emergency. Insurance company representatives may want to examine the scene of the accident immediately or crisis if it is severe; or they may direct you to take certain actions for them. It is important to follow directives from the insurance company as closely as possible to speed the process of settling financial and other needs of the organization and persons affected by the accident.

Aside from the contractual obligations of your insurance carrier, you should encourage the insurance carrier to provide personal assistance to the individuals affected by the crisis as quickly as possible.

**Victims**

The victims in all crises should be viewed as normal or adequate individuals whose lives have been temporarily interrupted by some action beyond their control. This action will undoubtedly traumatize the individuals to a lesser or greater extent. Most individuals will be at a loss as what to do in a crisis because most people are involved in only a single crisis. In a book on emergency care Arthur Ciancutti, M.D., describes the situation in which a person finds himself during a medical emergency.

> "A person's life is progressing more or less normally, perhaps with a crisis now and then to add spice. Then--suddenly and unexpectedly, totally without warning--he experiences a change in reality over which he apparently has no choice, no control, no time for deliberation or thought, no experience upon which to base personal decisions. He may be suffering physical pain or mental anguish. His very survival may be threatened. There is mystery; his future cannot be predicted. He may not know what is wrong. He probably does not know how it will be made right, or whether it can be. He is worried, distraught. The stakes are high. The dangers are real. And in this perilous moment of his life, he cannot take matters into his own hands, he cannot make his own decisions, he has apparently limited choice: he must depend on the knowledge and experience and compassionate interest of total strangers."[1]

The crisis team leader or caseworker, may be one of the compassionate individuals who will assist the victims back to where they were before the crisis. It is therefore

---

[1]Arthur Ciancutti, M.D., Emergency Care Handbook: How to Deal with People in Emergencies, Technomic Publishing Company, Westport, Connecticut, 1978, p. 86.

important that a strategy is developed for making positive approaches and not adding to their psychic injury or other stress.

The victim will undoubtedly be in a state of hyper-vigilance and it is critical that all contacts are relaxed and present a clear signal that the transit system will assist the individual in returning to normal. Communication with the victim on the scene by team members is important since it can reduce their fear of contact. Most individuals will welcome the contact and will have numerous questions and concerns. Direct and honest answers to those questions and concerns (by crisis team members) will be welcome.

When contacting hospitalized victims it is important to follow the advice of the health care workers assigned to them as closely as possible. The victim should be contacted only when the health care professionals indicate that it is appropriate. Appearance of the team leader and caseworker at the hospital or other location will make a deep and lasting impression on the victim, so be cognizant of your dress and appearance.

The initial post-crisis contact with the victims should be brief. The victims should be told as accurately as possible what to expect and what individuals will be visiting them over the next few days and weeks. Business cards should be distributed and their caseworker, should be introduced.

If possible, it is of great relief to the victims to know that their medical needs will be taken care of and that they should not worry. If you expect to have an accident investigation team or some authorized group interview victims, the victims should be informed when and why this will occur. After visiting with victims, it is important for you to maintain a list on a daily basis of promises and commitments you have made to them so that you can accurately fulfill them. It is important to note that the caseworker's job in contacting the victims is to meet their immediate needs. The hospital mental health worker should be depended upon to provide assistance to the individual - in locating loved ones, listening and reassuring relatives and answering psychological questions.

**Hidden Victims**

In some crises there may be hidden victims such as other individuals on the scene, rescue workers, or other employees who may have witnessed the crisis or accident. These individuals also may need contact from mental health workers. The crisis team should work in concert with the mental health workers identified in your plan and encourage them to assemble groups of hidden victims for counseling or encourage them to partake of individual counseling.

Members of the crisis response team may themselves be hidden victims and the plan should include efforts for counseling them once the crisis is over.

### Board and Employees

It will be important to your Board members and employees to hear about the crisis from transit management and the crisis team. If at all possible, it is important to contact the Board members and employees before the press describes the crisis. Crisis management team members may be assigned units of employees or Board members to contact regarding the crisis. At times it may be impossible to describe to the staff what has occurred before they find the information in the press, but even in this situation it is important to communicate to the staff what is known and what you hope to find out. By communicating early and often with Board members and employees the development of rumors can be avoided and staff morale can be maintained.

### Manufacturers and Vendors

In certain crises, manufacturers and vendors should be alerted to the fact that their product has been involved. They may be interested from a product liability or failure standpoint and may assist your organization in correcting potential problems with their product. A list of all principal manufacturers and vendors associated with the transit system should be prepared as an element of the disaster plan, so that they can be contacted as soon as possible after a crisis develops.

### Governmental Units

Certain governmental units beside local law enforcement agencies must be contacted in certain circumstances. Occupational death or injuries must be reported to the appropriate authorities. Fatalities involved in the operation of commercial vehicles or vehicles crossing state lines must be reported to the Federal Motor Carrier Safety Enforcement Group, if you are subject to the Federal Motor Carrier Safety regulations. Crises involving major spills of fuels should be reported to your local Environmental Protection Agency representative. (These individuals are normally notified through the fire department.) All responsible governmental units should be identified in your crisis management plan for possible contact.

### News Media

During a crisis all calls and inquiries from the news media should be directed to the individual designated in the crisis management plan. Secretaries and receptionists should be reminded of the crisis plan and asked not to offer their comments and opinions on the crisis. The designated individual should be on call twenty-four hours a day and if the crisis is of some duration and magnitude, regular press conferences should be called on a daily basis.

It is important to keep the news agencies informed and to be available when news is bad. Being available when news is bad will ensure that you fill the vacuum of information with desired information. It is important, as much as possible, that the organization fill the news vacuum because otherwise pseudo-experts or other special interest groups will do it for you. If you feel the need to call in experts from

outside your transit system to explain the event, this should be done under your sponsorship to aid in understanding the event.

Information should be presented quickly and all information available should be given out. If you are unable to give out certain information you should tell why and avoid saying "No comment." If you cannot give out information, it should be for a reason, such as that you are still investigating certain aspects, or next of kin have not been notified, or a lawsuit is pending and you are not able to respond to that line of questions.

At all times you should stay as positive as possible and if possible, you should go on the offensive and explain how this happened and why it is not going to or shouldn't happen again. The crisis you are involved in may not be of your making and indeed your transit system may be a victim. Even if the situation involves something that appears to be the system's responsibility, the crisis can be a time to let people know that the organization had so many years of perfect service, or that this event is an aberration for a logical reason.

The best time to deal with the news media concerning a crisis is before the crisis happens. Your crisis management plan should identify members of the media with whom you have good relationships. You should attempt to be available to the media at all times, not just after a crisis has occurred.

# VII. USE OF OUTSIDE ASSISTANCE

In the process of structuring a risk management program, transit systems may feel a lack of expertise in addressing some important needs. In such a case it may be advisable to seek outside assistance. This chapter addresses the important issues involved in hiring a risk management consultant. The chapter discusses when a consultant should be hired, describes the types of consultants who provide risk management services, outlines the basic steps that should be performed when hiring a consultant, and reviews conditions that make the relationship between transit systems and consultants unique.

## WHEN SHOULD A CONSULTANT BE HIRED?

A consultant should be hired when necessary work cannot or should not be done in-house. Making such a judgement requires a careful analysis of the required work versus system staffing, time, and fiscal constraints. Transit systems should first evaluate the expertise of their staff in the area of risk management. Systems with significant in-house expertise in risk management (typically larger transit systems) may require only the aid of a broker to market their insurance, and the possible use of consultants for specific tasks such as proposal evaluation or bid specification writing. Systems with little risk management expertise may require consultants to take on a more custodial role, covering many of the day-to-day tasks of risk management.

Time constraints may also be an important factor in hiring a consultant. The transit system may require a level of effort on their risk management program which staff does not currently have the time to supply. In such a case, a consultant will function more as extra staff than as a source of otherwise unavailable expertise.

Budgetary constraints are of critical importance. If the transit system is considering contracting for work on its risk management program, it is important to make an early and reasonably accurate judgment of how much such work will cost.

A clear view of expertise, time, and budget constraints will enable a transit system to decide whether any work should be contracted, and how work should be divided between consultants and its own staff. Another important decision to be made before hiring a consultant is whether or not the cost will be worth it. That is, will the benefits of hiring a consultant exceed the costs. Benefits include a better deal on any commercial insurance required, an insurance program that is tailored to the system's needs, and fewer in-house hours spent on the problem. Costs are essentially captured in the consultant's fee. Transit systems should be reasonably confident that the savings gained from lower insurance premiums, better insurance coverage, and lower in-house staff expenses will justify the cost of the consultant.

Finally, transit systems should consider other options to hiring a consultant in the event that in-house expertise is deemed insufficient. Some transit systems may be able to take advantage of risk management expertise in other branches of government--local, regional, or state. Also, sources of information for public systems may be of significant use. For example, during the hard insurance market of the mid 1980s, the Brockton Area Transit Authority (BAT) in Brockton, Massachusetts, compared its operation's insurance coverage and premiums with those of other small transit systems in the state to determine whether or not its premiums were reasonable. Some of this information was obtained directly from other transit systems, and some through the state's Executive Office of Transportation and Construction (EOTC).

## RISK MANAGEMENT CONSULTANTS

Once a transit system has decided that hiring a risk management consultant is an effective strategy, it is faced with the problem of choosing the right consultant. There are many types of consultants, each focusing on different aspects of risk management. Consequently, it is particularly important to know what different types of consultants actually do.

Risk management consultants can be divided into two types: dependent and independent. Dependent consultants derive at least some portion of their income directly from the sale of insurance. Independent consultants work solely on a fee basis. Within these two categories, there are further divisions. Different types of consultants are described below.

### Dependent Consultants

The two main types of dependent consultants are insurance brokers and insurance agents. The chief difference between these two is the level of "dependence;" an insurance agent is considerably more dependent than a broker. As a rule, agents represent insurance companies, while brokers represent clients to insurance companies. Generally speaking, insurance agents are so dependent that some would argue that the term consultant does not apply. To illustrate, the Independent Insurance Agents of America (IIAA) has recommended that its members stop using the term "consultant" in advertising themselves.

The chief function of insurance brokers is the marketing of their clients' insurance offerings to insurers. In fulfilling this function, the brokers' experience with the insurance market, with structuring insurance offerings for maximum effectiveness, and with negotiating with insurers, can all be valuable assets. Brokers' experience with the insurance market enables them to select from a theoretically large number of insurers those few which are most suitable to a client. A good broker will also be able to judge, for example, whether an insurance offering should be put all in one package, or whether to market different areas of risk separately.

Finally, a good broker is personally familiar with the insurers, and thus has an advantage in negotiation.

Brokers may also provide a wide array of other services. These services may include:

- evaluation and/or drafting of insurance programs, including policy wording, accuracy, and verification of premiums;
- risk identification and evaluation;
- valuation of insurable property;
- loss prevention and control; and
- risk management program administration.

Brokers are usually paid by commission; 10% of the net premium on any insurance bought through the broker is common. It is sometimes possible to have brokers perform work on a negotiated "fee-for-work" basis rather than for a commission. Most risk managers prefer this method of payment to commissions. Commissions are often perceived as too high, acting as a financial incentive to sell more insurance. Many of the services described above may be performed on a fee basis rather than for a commission, including insurance offering marketing services. To the extent that services are provided on this basis, the broker may behave more "independently," making the difference between brokers and independent consultants less clear-cut.

**Independent Consultants**

One of the important differences between independent and dependent consultants is that independent consultants generally bring a greater degree of objectivity to the client's problem. They may also possess greater expertise in some areas than brokers.

There are many types of independent consultants, and the services they offer tend to overlap, particularly in the case of some of the more general consultants. Independent consultants include management consultants, loss control consultants, claims adjustors and administrators, actuaries, academics in the field of risk management, and many others. The services they provide are numerous, including risk management audit functions such as insurance adequacy assessment, risk management program design, and cost effectiveness studies. Consultants may also be used for a variety of special studies such as proposal evaluation; feasibility studies for captive insurance companies, self-insurance and other alternative forms of insurance; insurance remarketing advice; and studies of the risk implications of acquisitions and changes in service.

## HIRING A CONSULTANT

There are a number of basic steps which should be performed when hiring a consultant. The first of these is obtaining the names of consultants who might be suitable. An important source of such information is word of mouth; other transit systems may have hired consultants for similar work. In addition, there are several organizations that keep lists of risk management consultants including:

. Public Risk Management Association (PRIMA)
1120 G Street, N.W.
Suite 400
Washington, DC 20005
(202) 626-4650

. Risk and Insurance Management Society (RIMS)
205 East 42nd Street
New York, NY 10017
(212) 286-9292

. Society of Risk Management Consultants
Bernard J. McGovern (secretary)
Insurance Buyer's Council
22 West Road
Baltimore, MD 21204
(301) 828-1656

. Business Insurance Magazine
Crain Communications, Inc.
740 Rush Street
Chicago, IL 60611
(a spring issue each year reports on and lists risk management consultants)

The essential steps for hiring an independent consultant differ somewhat from those for hiring a broker. Exhibit VII.1 outlines some important steps to follow in hiring an independent consultant.

An understanding of desirable qualities in a consultant is helpful both in selecting consultants who will receive a Request for Proposal (RFP) and in judging consultants who have submitted proposals. Qualities that should be looked for in a consultant include:[1]

. Objectivity - freedom from biases, personal interests and preconceptions.

---

[1]"Pooling: An Introduction for Public Agencies," Public Risk Management Association in cooperation with PRIMA's Pooling Section, 1987.

## EXHIBIT VII.1

## STEPS IN OBTAINING A CONSULTANT

1) Identify the problem and decide whether or not you really need a consultant.

   . Is there any expertise in your organization for dealing with the matter?
   . Is time a great constraint on additional in-house duties?
   . Is outside assessment vital to the undertaking?
   . Is the expense worth it?

2) Define the scope of the assignment.

   . What do you want to study? Discuss your project with others who have done similar work. Use all of the available resources in order to better define what it is you want to examine. If you do not understand what it is you want, a consultant cannot be expected to give you what you need.

3) Develop a Request for Proposal (RFP).

   . A Request for Proposal (RFP) will help you clearly define the purpose of the project, scope of the work, timing, and other project details.

4) Identify the consulting firms to receive the RFP.

   . Locate firms offering quality work. Remember that size does not necessarily reflect quality.

5) Mail the RFP to the selected firms.

6) Analyze the proposals submitted.

   . Did the consultant communicate clearly and effectively?
   . Did the consultant understand what you want?
   . What are the differences between firms?

7) Interview the top two or three firms at screening sessions.

   . Consultant to be assigned to the project should be in attendance
   . Discuss each firm's general approach to the project
   . Check references

8) Negotiate with the firm at the top of your list.

   . If agreement cannot be reached on activities, fees, billing, timetable, type of report, need for client participation, etc., negotiate with your second choice.

9) Select firm and finalize terms.

   . Describe any changes in the proposal
   . Establish billing methods
   . Determine timetable for progress reports
   . Get the agreement in writing

Source: "Pooling: An Introduction for Public Agencies," Public Risk Management Association (PRIMA), in cooperation with PRIMA's Pooling Section, 1987, p. 16.

. Experience - with government systems in general, and transit systems in particular. Experience with transit systems similar in size and modes operated is also desirable.

. Knowledge - of the special problems and characteristics of your transit system.

. Qualifications - the consultant should be well qualified in the area to be studied.

. Time - the consultant should have enough time available to do proper justice to the project.

. Communication - the consultant should be able to communicate well, and at a level of expertise appropriate to the client.

The proper method of hiring an insurance broker can be more situation dependent than that of hiring an independent consultant. There are four basic ways to hire an insurance broker:[1]

. Direct appointment

. Broker's proposal

. Qualified competitive quotes

. Unrestricted competition

Each of these methods has advantages and disadvantages. For example, it may not be legal for public transit systems to directly appoint a broker; some public systems are required to go through a competitive bidding process. Even in the absence of such a rule, direct appointment is likely to be efficient only if the system is very familiar with the broker or brokers in question.

The broker's proposal method is similar to that of choosing an independent consultant. There is, however, a considerable degree of uncertainty involved in the broker's proposal since, in this method, brokers typically are prohibited from approaching insurers with the transit system's offering before submitting the proposal. Thus, the broker's estimates of insurance premiums and coverage may be inaccurate.

In the qualified competitive quotes method, two or three brokers are authorized to negotiate in separate markets (e.g., liability insurance, life insurance, health insurance, etc.). This method can foster competition while making accurate quotes more likely.

---

[1]Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610, 1986, Topic A-6.

In unrestricted competition, all brokers may quote on the transit system's offering, and may approach insurers as they see fit. However, insurers may refuse to quote if approached by too many brokers concerning the same account (none of whom yet have the account in hand), and the markets approached by bidding brokers may sometimes be substandard (i.e., the insurers may not have experience in the transit industry).

Desirable qualities in a broker are similar to those desired in an independent consultant. They include:

- Experience - in representing government systems, particularly transit systems, and in other functions the broker may offer.
- Reputation - a good reputation in the insurance community is a reasonable indicator of quality.
- Skill - the broker should be able to effectively market the transit system's insurance offering.
- Time - the broker should be willing and able to devote sufficient time to the account.

In addition to taking correct steps in hiring a consultant, there are a number of other ways a transit system can maximize the chances of a successful client-consultant relationship. Some suggestions are summarized in Exhibit VII.2. One of the most important steps in hiring a consultant or broker is writing the Request for Proposal (RFP). Elements that should be included in any RFP to a consultant are listed in Exhibit VII.3.

The Request for Proposal should not be too restrictive of the consultant in terms of project outcome and method used to analyze the problem. The consultant should be given considerable latitude to encourage the best use of creativity and expertise.

When hiring an insurance broker it may sometimes be necessary to solicit proposals. Appendix M provides an example of an RFP directed toward insurance brokers. This proposal is structured as part of the "broker's proposal" hiring method described above, and prohibits brokers from approaching insurers before the account has been awarded.

## TRANSIT SYSTEMS AND CONSULTANTS

It is quite common for transit systems to make use of one or more consultants in the structuring and administration of their risk management programs. Our survey of transit systems risk management practices found frequent use of consultants of all types; 29.2 percent of all systems surveyed had used a loss control (safety) consultant within the past three years, 25.4 percent had used a general risk

## EXHIBIT VII.2

## SUGGESTIONS FOR HIRING A RISK MANAGEMENT CONSULTANT

- Allow enough time for the consultant hiring process to proceed properly.
- Make sure the consultant concentrates on your needs in the interview process:
  - How well does the consultant listen and respond to questions?
  - Look at samples of the consultant's work that are similar to your agency's task.
  - Ask the consultant to discuss his/her general approach to the problem.
- Be certain the consultant knows why the project is being done and what resources and abilities are available on your staff.
- Do not take on an inexperienced consultant for a large project, such as a feasibility study.
- Talk to the people who will actually be doing the work. Do not choose a firm on the basis of the salesperson.
- Discuss fees up front. Find out exactly how much the project will cost. Look for ways to alter the project if costs are too high.
- Do not pay the consultant for work that can be done in-house, such as data collection.
- Avoid asking for additional work of the consultant in mid-project. Be clear on the scope of work at the outset.
- Be clear up front on the method the consultant proposes to use in solving the problem.
- Indicate at the outset how extensive reports must be. Consider the need for written reports. Establish whether a personal presentation of study results is necessary.
- Set reasonable deadlines.
- Allow enough time to complete the project. Also schedule ample time for meeting with the consultant throughout the project. Set up a meeting on each deadline date.
- Involve all of the affected decision makers in the transit system.
- Give the consultant all the information needed. Always be prepared to answer the consultant's questions.
- Keep all interested parties informed of progress on the project.
- Do not be afraid to profess ignorance. Ask the consultant to explain unfamiliar terms.
- Call references. Ask the consultant for a list of all clients. A short list of clients submitted by a consultant may be the only ones happy with its work. Find out about the consultant's past performance concerning deadlines and budget.

Source: Public Risk and Insurance Management Association, "United Way of America Risk Management Guide for Non-Profits," R. Bradley Johnson, PRIMA Staff Associate, principal author, 1987.

## EXHIBIT VII.3

## ELEMENTS OF A REQUEST FOR PROPOSAL

- An introduction summarizing the purpose of the RFP and project requirements.
- Background information on your transit system, such as size and composition of fleet and fixed assets, ridership, budget, a description of insurance policies and premiums, etc.
- A description of the problem to be solved and its background.
- A description/list of study objectives, including possible expected outcomes and solutions that should be addressed, whether accepted or rejected.
- An outline of the criteria by which proposals will be judged.
- Proposal guidelines, including statements concerning the system's reservation of the right to reject proposals and regarding the responsibility for proposal costs.
- A proposed schedule of work.
- A description of costs, including final total cost.
- Biographical information on individuals who will be involved in the project.
- A request for references from other transit systems for which the consultant has done similar work.

Source: Practical Risk Management: The Professionals Handbook, P.O. Box 10093, Oakland, CA 94610, 1986, Topic A-6.

management consultant, 16.2 percent had used actuarial services, and 16.2 percent had used outside claims auditors. The survey found more extensive use of consultants among medium sized and larger transit systems (50 to 3500 vehicles) than among the smallest systems (0 to 50 vehicles). The figures suggest that budgetary constraints among the smallest systems may restrict their use of consultants. In addition to these consultants, many transit systems made use of insurance brokers for insurance marketing and other services.

In recent years, the American insurance market for public entities has become very specialized, and the market has narrowed because of a number of factors, including fear of very large claims. Transit systems have been forced to consider alternative markets and to consider alternative forms of risk financing; these may include captive insurance companies, risk retention groups, self-insurance, and insurance pooling (see Chapter IV). These alternatives can affect the policy of transit systems in hiring consultants. For example, marketing an insurance offering in a large market is a different problem from marketing in a market with very few insurers; this may affect a transit system's decision on which, if any, broker to retain.

Transit systems also possess special characteristics as systems that must provide their services regardless of risk. This can limit the scope of recommendations which, for example, a loss control consultant may provide. Public transit systems' actions are also governed by laws concerning public systems, which vary from place to place. This may encourage transit systems to favor consultants most familiar with local conditions as well as the transit industry. Consultants must be familiar with the special problems of transit systems in order for the transit system/consultant relationship to be a productive one.

# VIII. RISK MANAGEMENT RESOURCES

Risk management is a rapidly expanding profession, and as professionals grow they invariably want to know, "Where can I find out more?." What follows is a list of associations, organizations, publications and educational materials which serve as the profession's knowledge base. Whether you have a particular problem that needs solving or simply want to increase your knowledge and contacts, you'll find that turning to the resources listed below can assist you by providing fresh information and preventing unnecessary duplication of effort.

## ORGANIZATIONS AND PROFESSIONAL ASSOCIATIONS

### Risk Management

The Public Risk Management Association (PRIMA)
1120 G St. NW
Suite 400
Washington, DC 20005
(202) 626-4650

The Risk and Insurance Management Society, Inc. (RIMS)
20 East 42nd St.
New York, NY 10017
(212) 286-9292

Self-Insurance Institute of America
P.O. Box 15466
Santa Ana, CA 92705
(714) 261-2553

Society for Risk Analysis
1340 Old Chain Bridge Rd.
Suite 300
McLean, VA 22101
(703) 790-1745

Society of Risk Management Consultants
Bernard J. McGovern (Secretary)
Insurance Buyer's Council
22 West Road
Baltimore, MD 21204
(301) 828-1656

**Safety**

American Academy of Safety Education
c/o Jack Green
2202 Hathaway Dr.
Greensboro, NC 27408
(919) 282-2589

American Society for Industrial Security (ASIS)
2000 K St. NW
Suite 651
Washington, D.C. 20006

American Society of Safety Engineers
1800 East Oakton St.
Des Plaines, IL 60018
(312) 692-4121

Board of Certified Safety Professionals of America
208 Burwash Ave.
Savoy, IL 61874
(217) 359-9263

Board of Hazard Control Management
8009 Carita Court
Bethesda, MD 20817
(301) 984-8969

Council for Safe Transportation of Hazardous Articles
P.O. Box 3723
Washington, D.C. 20007

Federal Emergency Management Agency (FEMA)
National Office
Washington, DC 20472
(202) 254-6827

Highway Loss Data Institute (HLDI)
Watergate Six Hundred
600 New Hampshire Ave. NW
Washington, D.C. 20037
(202) 333-6200

International Institute for Safety in Transportation
P.O. Box 63
Franklin Square, NY 11010
(516) 455-0050

National Institute of Occupational Safety and Health (NIOSH)
Centers for Disease Control
1600 Clifton Road NE
Atlanta, GA 30333

National Safety Council
444 North Michigan Ave.
Chicago, IL 60611
(312) 527-4800

National Safety Management Society (NSMS)
3871 Piedmont Ave.
Oakland, CA 94611
(415) 653-4148

National Transportation Safety Association (NTSA)
8000 N. Ocean Dr.
Dania, FL 33004
(305) 475-7487

The Safety Society
1900 Association Dr.
Reston, VA 22091
(703) 476-3440

**Insurance**

Alliance of American Insurers (AAI)
1501 Woodfield Rd.
Suite 401
Schaumberg, IL 60159
(312) 490-8500

American Insurance Association (AIA)
85 John St.
New York, NY 10038-2823
(212) 669-0400

American Risk & Insurance Association (ARIA)
Dr. Richard E. Johnson
Executive Director
Brooks Hall
University of Georgia
Athens, GA 30602

Independent Insurance Agents of America
600 Pennsylvania Ave. SE
Washington, DC 20003
(202) 544-5833

Insurance Information Institute (III)
110 William St.
New York, NY 10038
(212) 699-9200

Insurance Institute of America, Inc. (IIA)
Providence and Sugartown Roads
Malvern, PA 19355
(215) 644-2100

Insurance Services Office, Inc. (ISO)
160 Water St.
New York, NY 10038

National Association of Insurance Commissioners
120 W. 12th St.
Kansas City, MO 64105
(816) 842-3600

National Association of Professional Insurance Agents (PIA)
400 N. Washington St.
Alexandria, VA 22314
(703) 836-9340

National Insurance Consumer Organization
121 N. Payne St.
Alexandria, VA 22314
(703) 459-8050

Society of Chartered Property and Casualty Underwriters
Kahler Hall
Providence Rd. (CB No. 9)
Malvern, PA 19355
(215) 251-2728

Professional society to foster the higher education of those engaged in insurance and risk management; encourages and conducts research.

Surety Association of America (SAA)
100 Wood Ave. South (Metropark)
Iselin, NJ 08830
(201) 494-7600

Statistical rating, development and advisory organization and forum for surety companies.

**Other Organizations**

Academy for State and Local Government
400 N. Capitol St. NW
Washington, DC 20001

American Industrial Hygiene Association (AIHA)
47 S. Wolf Ledges Parkway
Akron, OH 44311
(216) 762-7294

American Public Transit Association
1225 Connecticut Ave. NW, Suite 200
Washington, DC 20036
(202) 828-2800

American Public Works Association
1313 East 60th St.
Chicago, IL 60637

American Tort Reform Association
1250 Connecticut Ave. NW, 7th Floor
Washington, DC 20036
(202) 637-6490

Jury Verdict Research Inc.
30700 Bainbridge Road
Suite H
Solon, OH 44139
(800) 321-6910

Provides research and statistical analysis of personal injury claims across the nation.

Occupational Safety and Health Administration (OSHA)
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210
(202) 523-6072

Society of Fire Protection Engineers (SFPE)
60 Batterymarch St.
Boston, MA 02110
(617) 482-0686

U.S. Environmental Protection Agency (EPA)
401 M St. SW
Washington, DC 20460
(800) 424-4000

U.S. Department of Transportation
Nassif Building
400 7th St. SW
Washington, DC 20590
(800) 424-9071

Urban Mass Transportation Administration
Nassif Building
400 7th Street, SW
Washington, DC 20590
(800) 424-9071

## HANDBOOKS, MANUALS AND PUBLICATIONS

### Risk Management

American Public Transit Association
1225 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
(202) 828-2800

- A Manual on Risk Management for the Public Transit Industry prepared by Charles T. Barthlomae, September 1986.

American Society of Safety Engineers
1800 East Oakton St.
Des Plaines, IL 60018

- Profitable Risk Control: The Winning Edge (Identifies ways that managers can work to reduce the many types of losses resulting from human error. Includes 100 case histories.)

International Institute of Safety & Health
5010 Nicholson Lane
Rockville, MD 20852

. Hazard Control Information Handbook

The Merritt Co.
1661 Ninth St.
P.O. Box 955
Santa Monica, CA 90406

. Risk Management Manual (also in a special college and university edition)

National Fire Protection Association
Batterymarch Park
Quincy, MA 02269
(800) 344-3555

. Fire Protection Handbook (General reference on fire protection for the risk manager)

National Safety Council
P.O. Box 11933
Chicago, IL 60611
(312) 527-4800

. Accident Prevention Manual for Industrial Operations

Practical Risk Management Inc.
P.O. Box 10093
Oakland, CA 94610
(415) 653-3687

. Practical Risk Management (An extensive risk management handbook in two volumes. Emphasis on management but considerable detail on insurance. Updated and supplemented bimonthly. Loose-leaf with detailed index.)

Prentice-Hall Inc.
Book Distribution Center
Route 59 at Brookhill Drive
West Nyack, NY 10995

. Managing Risk by Vernon L. Grose (In non-technical language, shows how to combine facets of risk into a graphic format that visually ranks risk priorities.)

The Public Risk Management Association (PRIMA)
1120 G St. NW
Suite 400
Washington, DC 20005
(202) 626-4650

- Pooling: An Introduction for Public Agencies (A how to manual for starting an intergovernmental pool)
- Risk Pools: Innovative, Indispensable (Answers to often-asked questions about intergovernmental self-insurance pools)
- Tort Liability Today: A Guide for State and Local Governments (A definitive guide to tort law and reform in each state)
- Basic Risk Management Handbook for Local Governments
- Public Officials At Risk: A Guide to Limiting Liability
- Risk Management Today: A How-To Guide for Local Government
- "OUTREACH" (PRIMA's Outreach series reprints successful programs from its member governments and authorities)
  - Recreation and Community Service Manual
  - Motor Vehicle Safety: Policies and Procedures
  - Risk Management Guide for Data Processing Operations
  - The Safety Manual from the City of Colonial Heights, Virginia
  - Procedure Manual for Contract Requirements
  - Risk Management Manual
  - Emergency Disaster Plan
  - School Bus Drivers Training Manual
  - Special Events Policies and Procedures

Risk Management Publishing Company
2030 East Broadway
Suite 110
Tucson, AZ 85719
(602) 622-5174

- Government Risk Management Manual

U.S. Chamber of Commerce
1715 H St., NW
Washington, DC 60611
(312) 527-4800

- Analysis of Workers' Compensation Laws

United Way of America
Sales Service Department
701 Fairfax St.
Alexandria, VA 22314

- Risk Management: A Guide for Non-Profits

Urban Mass Transportation Administration
400 7th Street, SW
Washington, DC 20590

- "Draft Content Guidelines for Bus System Safety Program Plans," prepared by American Public Transit Association Safety and System Assurance Liaison Board, 1979.

- Public Transit Risk Management: A Handbook for Public Transit Executives, prepared by Fred S. James and Co., December 1978.

- Wisconsin Bus Safety Manual, prepared by National Transit Services in association with the David L. Ellis Agency, September 1985.

**Risk Financing**

International Risk Management Institute Inc. (IRMI)
12222 Merit Dr.
Suite 1660
Dallas, TX 75251
(214) 960-7693

- Glossary of Insurance and Risk Management Terms (Defines over 1,500 key insurance and risk management terms and phrases in layman's language.)

- Exposure Survey Questionnaire (Assists risk manager in identifying important loss exposures and determining necessary insurance coverages.)

- Guidelines for Insurance Specifications (A reference manual designed to assist insurance buyers, risk managers, and consultants in the preparation of comprehensive and easily understood insurance specifications.)

**Underground Storage Tanks**

Environmental Protection Agency
Washington, D.C.

- Underground Storage Tanks (UST) - The New Federal Law (Short flier outlining provisions of the new law. Nov 1985.)

- Leaking Underground Storage Tanks Containing Motor Fuels (Chemical Advisory. Sept. 1984, 4 pp.)

- More About Leaking Underground Storage Tanks (Background booklet for the Chemical Advisory. Oct. 1984, 72 pp.)

- Proposed Regulations for Underground Storage Tanks: What's in the Pipeline (Summary of proposed technical standards and corrective action regulations. Apr. 1987, 18 pp.)

- Proposed Regulations for Underground Storage Tanks: Your Financial Responsibilities (Summary of proposed requirements and means for meeting financial responsibilities for tanks containing petroleum products. Apr. 1987, 5pp.)

- Designing and Installing Underground Storage Tanks Under the New Federal Law (A short summary of this component of the new underground tank requirements.)

- The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks (Booklet covering the interim regulations. Aug. 1986, 105 pp.)

- Trust Fund for Leaking Underground Storage Tanks (Questions and Answers, Facts and Figures, The Fund Before and After Regulation. Short fliers on the fund's use. Mar. 1987.)

- Underground Storage Tanks Containing Hazardous Substances; Financial Responsibility Requirements (Advance Notice of Proposed Rulemaking to amend 40 CFR 280. Federal Register Feb. 9, 1988, pp. 3818-26.)

- Notification Requirements for UST (Information required and agencies to which to report. Forms illustrated. 40 CFR 280.)

**Insurance**

A.M. Best Company
Ambest Rd.
Oldwick, NJ 08858
(201) 439-2200

- Best's Municipal Underwriting Guide (Guide to underwriting municipal and government risk.)

- Best's Insurance Reports (Property-Casualty) (Operating and finance details on all U.S. and many foreign insurance companies.)

- Best's Key Rating Guide (A summary of 5-year financial data on all U.S. insurers. Gives the "Best Rating" figures for all insurers.)

The National Underwriter Co.
420 E. 4th St.
Cincinnati, OH 45202
(513) 721-2140

- Agent & Buyer 's Guide (A guide to purchasing insurance by line.)

- Fire, Casualty and Surety Bulletins

Warren, McVeigh & Griffin
1420 Bristol St. N.
Newport Beach, CA 92660
(714) 752-1058

- Commercial Liability Insurance (A two-volume loose-leaf manual that covers primary insurance, liability insurance, with policy analysis and specimen forms.)

- The Umbrella Book (A two-volume loose-leaf, detailed analysis of most umbrella liability policies.)

## PERIODICALS

### Risk & Insurance Management

American Risk and Insurance Association
University of Central Florida
Dr. David Clerk
Dept. of Finance
School of Business
Orlando, FL 32816
(803) 777-7428

- Journal of Risk and Insurance

Buraff Publications Inc.
The Bureau of National Affairs
2445 M St. NW
Suite 275
Washington, DC 20037
(202) 452-7889

- Insurance and Risk Management for Business and Government

Crain Communication Inc.
740 Rush St.
Chicago, IL 60611

- Business Insurance (A weekly news magazine featuring current events, features and commentary on the insurance industry.)

Insurance Information Institute
110 William St.
New York, NY 10038
(212) 699-9200

- Insurance Facts (An annual compendium of insurance statistics.)

- Executive Letter (A newsletter of insurance current events.)

International Risk Management Institute Inc.
12222 Merit Dr.
Suite 1660
Dallas, TX 75251
(214) 960-7693

- The Risk Report (Monthly coverage of selected risk management issues.)

Property and Casualty Insurance Edition
The National Underwriter Co.
420 E. 4th St.
Cincinnati, OH 45202
(513) 721-2140

- The National Underwriter (A weekly news magazine featuring current events, features and commentary on the insurance industry.)

The Public Risk Management Association (PRIMA)
1120 G St. NW
Suite 400
Washington, DC 20005
(202) 626-4650

- Public Risk (PRIMA's bimonthly magazine featuring in-depth articles on subjects of interest to public sector risk managers.)

- RiskWatch (a biweekly current events newsletter.)

The Risk & Insurance Management Society, Inc. (RIMS)
20 East 42nd St.
New York, NY 10017
(212) 286-9292

- Risk Management (Feature articles on risk management and news on RIMS activities.)

Shelby Publishing Co.
Wellesley Office Park
Wellesley, MA 02181
(617) 235-8450

- John Liner Review (Quarterly issues feature in-depth essays on insurance topics.)

- John Liner Letter (Monthly report in an 8-page format devoted mostly to a single insurance topic.)

Superintendent of Documents
Washington, DC 20402

- Federal Register (A daily record of the activities of the U.S. government and its agencies.)

Tillinghast, A Towers Perrin Company
722 Post Rd.
Darien, CT 06820
(203) 655-9791

. Government Risk Management Reports

David Warren, CPCU
58 Diablo View Dr.
Orinda, CA 94563
(415) 254-9472

. The Warren Report (Monthly six-page commentary on risk management issues.)

**Safety**

American Society of Industrial Security
1655 N. Fort Meyer Dr., Suite 1200
Arlington, VA 22209
(703) 522-5800

. Security Management (Targeted for crime protection professionals. Considers how security may conflict with risk management or other business goals.)

American Society of Safety Engineers
850 Busse Highway
Park Ridge, IL 60068
(312) 692-4121

. Professional Safety (Non-technical articles on preventing a range of property, liability and personnel losses.)

## AUDIO-VISUAL

The Film Library International Safety Academy
P.O. Box 76146
Los Angeles, CA 90076
(213) 381-5569

Greater Los Angeles Chapter National Safety Council
Film Library
616 S. Westmoreland Ave.
Los Angeles, CA 90005
(213) 385-6461

National Committee on Films for Safety (NCFS)
c/o R.W. O'Brien
444 Michigan Ave. 20th Fl.
Chicago, IL 60611
(312) 527-4800

The Public Risk Management Association (PRIMA)
1120 G St. NW
Suite 400
Washington, DC 20005
(202) 626-4650

- PRIMAVISION (A PRIMA service which presents highlights from PRIMA's popular seminars and conferences on video tape.

- Assembling the Safety and Loss Control Puzzle (A one hour program which explains to viewers the components of an effective workable safety and loss control program.)

- Claims Management: Inside vs. Outside (This tape focuses on the advantages and disadvantages of both in-house claims management and claims management through third-party administrators. Assists in decided which form of claims management would be most effective in a given situation.)

## TEXTBOOKS

Insurance Institute of America
Providence and Sugartown Roads
Malvern, PA 19355
(215) 644-2100

- "Risk Management Course Guides" (These are step-by-step guides to the course content of the Insurance Institute of America's three courses on risk management which lead to the Associate in Risk Management Diploma.)

  - RM 54 Course Guide: Structure of the Risk Management Process contains articles on risk finance, risk evaluation, flow charts, probability, and capital budgeting.

  - RM 55 Course Guide: Risk Control contains information on safety, fire protection, products loss control, and other risk control techniques

  - RM 56 Course Guide: Risk Finance includes risk finance, capital budgeting, captive insurance companies, selecting insurers, and allocating costs.

- Collected Essays on Risk Management is drawn from the published writings of Dr. George Head, CPCU, ARM, CSP, CLU.

Richard D. Irwin Inc.
1818 Ridge Road
Homewood, IL 60430
(312) 798-6000

. Risk Management Concepts and Applications (An in-depth textbook to the field.)

## PROFESSIONAL DESIGNATIONS

Board of Certified Safety Professionals
208 Burwash St.
Savoy, IL 61874
(217) 359-9263

. Certified Safety Professional (CSP)[1]

CEBS Department
International Foundation of Employee Benefits
18700 W. Bluemond Road
P.O. Box 69
Brookfield, WI 53008
(414) 786-6700

. Certified Employee Benefit Specialist Program (CEBS) (The CEBS is available to those who pass a ten-course curriculum sponsored by the International Foundation of Employee Benefits and the Wharton School of the University of Pennsylvania.)

Insurance Institute of America
Providence and Sugartown Roads
Malvern, PA 19355
(215) 644-2100

. Associate of Risk Management (ARM) (The Associate of Risk Management program consists of three sections. Each section is tailored to a one)semester course and has an organized course guide. Twice a year, examinations are held at approved sites in the U.S. Students must pass all three examinations to be awarded the ARM.)

---

[1]The designation CSP (Certified Safety Professional) is a professional designation for safety managers.

. Chartered Property and Casualty Underwriter (CPCU) (The American Institute for Property and Liability Underwriters awards the CPCU designation. It consists of ten one-semester courses, each followed by a national examination.)

# APPENDIX J

# KEY EXPOSURES AND TYPES OF INSURANCE COVERAGE

### Automobile Liability

Automobile liability insurance is very important to public transportation systems since it covers liability for the operations of buses and automobiles.

- Basic policies include vehicles that are owned or leased by the transit system and cover bodily injury and property damage. Non-owned vehicles, such as vehicles owned by employees that are used on transit system business, may not be included in the basic policy unless added by endorsement.

- Comprehensive policies include the ownership, maintenance. or use of any owned, leased or non-owned vehicle.

Coverage for physical damage to vehicles is often provided by endorsement to both basic and comprehensive automobile liability insurance policies. Many transit systems do not purchase uninsured motorist or medical payment coverages to avoid claims. State legislation generally determines whether uninsured motorists coverage must be purchased.

Some of the common exclusions found in automobile liability insurance policies include:

- liability assumed under contract;

- liability generated by workers' compensation laws; and

- injuries to employees caused by fellow employees.

### General Liability

General liability insurance provides protection for legal liability for bodily injury and property damage from the ownership, maintenance and use of premises and performance of operations. This type of insurance may be purchased under a number of different forms including: Garage Liability (GL), Owners, Landlords and Tenants (OLT), Business Owners Policy (BOP), Manufacturers and Contractors (MC), and Commercial General Liability policy (CGL). The MC and OLT policies are generally more limited than the BOP and CGL policies.

Transit systems should carefully review individual policies to ensure that the terms and conditions it needs are met. General liability policies cover different exposures and should not be presumed to be comparable. Often an exposure included in one policy may need to be added by endorsement to another. For example, the following exposures are frequently added by endorsement: explosion, collapse and underground property damage, fire legal, garage keepers legal, and personal injury liability.

### Rail Operations Liability

Rail transit services may find that liability for rail operations is excluded from their general liability policy. Consequently, they must purchase a separate policy to cover bodily injury and property damage for rail operations. Transit systems will find that this insurance is most economical with a substantial self-insured retention. Retentions of $2,000,000 or more per occurrence are common.

Rail liability insurance policies often indemnify the insured rather than "pay on the behalf of the insured." This means that the insured pays all costs that it is obligated to pay and is subsequently reimbursed by the insurer. Exclusions commonly found in rail liability policies include claims from: discrimination, workers' compensation, property damage to property in care, custody, or control, and personal injury or property damage assumed under contract.

### Miscellaneous Liability

As suggested above, a number of liability exposures that may be important to a transit system may not be included in a general liability insurance policy. Consequently, separate policies or endorsements must be attained. Two examples of such miscellaneous exposures are:

- Public Officials Errors and Omissions - This type of insurance is also called directors and officers liability. It covers a director or public servant for alleged wrongful acts, errors, omissions, misstatements, neglect or breach of duties in claims or suits. It does not apply to dishonest, fraudulent or malicious acts. It is intended to cover what some have called "administrative malpractice" for claims brought against governing boards by a transit system employee. Covered claims include wrongful termination, unlawful discrimination in establishing bus routes and not following bid procedures. Although some states have passed provisions to immunize public board members against liability or restrict liability, insurance may be important to a transit system.

- Professional Liability - This insurance covers liability arising from providing professional advice and related services. For transit systems that direct senior staff to provide professional or management advice to other (perhaps smaller) systems on technical issues (e.g., routes, fare schedules, etc.) a liability exposure may result, especially if done under a formal contract for compensation. A special policy must be procured to cover this exposure.

### Property

Property insurance provides for the replacement or repair of damaged real and personal property and may cover resulting costs (extra expense) or loss of revenues (business interruption). The policies are typically divided into two parts to address the property insured and the perils insured against.

- Property insured - coverage may be attained with specific limits on scheduled properties or a blanket limit for all locations. Blanket coverage which states "all real and personal property" is preferred because it reduces the chance that a limit is understated or that a location is not listed.

- Perils insured - generally includes fire and related damage such as smoke and water damage, debris removal, and lightening. Other perils may be included or may be added by endorsement such as civil commotion, hail, explosion, riot, flood, and earthquake. The need for coverage for these perils varies with the location of the transit system. So-called "all risk" coverage is preferred to "named perils" forms.

Policies may be purchased to cover the actual cash value or replacement value. This means that the property may be valued based on the original cost minus depreciation or based on today's cost for in-kind replacement. Most buildings must be insured for a stated (co-insurance) percentage of their value or the loss recovery is reduced.

**Crime**

Crime insurance provides protection from loss of money, securities, and property due to dishonest acts of employees and non-employees. Two options for structuring crime insurance are:

- Monoline policies - a fidelity bond for employees and one or more policies for non-employees. The fidelity bond protects the transit system from theft. The bonding company has the right to recover its loss from embezzlement and similar criminal acts of employees from the employee or official and attach their assets. Robbery, burglary and depositors forgery policies are among the types of crime insurance purchased to protect against these types of crimes perpetrated by outsiders.

- Package policies are sometimes called 3-D or blanket crime policies. The 3-D policy allows the selection from a number of limits and coverages such as employee dishonesty, loss of money and securities, depositors forgery, and money order and counterfeit paper currency. The blanket crime policy covers all of the same crimes with a single blanket limit.

Differences in crime policies exist regarding whether they are per employee or per loss regardless of the number of employees. Consequently, policies must be carefully checked before they are purchased.

## Rail Operations Liability

Rail transit services may find that liability for rail operations is excluded from their general liability policy. Consequently, they must purchase a separate policy to cover bodily injury and property damage for rail operations. Transit systems will find that this insurance is most economical with a substantial self-insured retention. Retentions of $2,000,000 or more per occurrence are common.

Rail liability insurance policies often indemnify the insured rather than "pay on the behalf of the insured." This means that the insured pays all costs that it is obligated to pay and is subsequently reimbursed by the insurer. Exclusions commonly found in rail liability policies include claims from: discrimination, workers' compensation, property damage to property in care, custody, or control, and personal injury or property damage assumed under contract.

## Miscellaneous Liability

As suggested above, a number of liability exposures that may be important to a transit system may not be included in a general liability insurance policy. Consequently, separate policies or endorsements must be attained. Two examples of such miscellaneous exposures are:

- Public Officials Errors and Omissions - This type of insurance is also called directors and officers liability. It covers a director or public servant for alleged wrongful acts, errors, omissions, misstatements, neglect or breach of duties in claims or suits. It does not apply to dishonest, fraudulent or malicious acts. It is intended to cover what some have called "administrative malpractice" for claims brought against governing boards by a transit system employee. Covered claims include wrongful termination, unlawful discrimination in establishing bus routes and not following bid procedures. Although some states have passed provisions to immunize public board members against liability or restrict liability, insurance may be important to a transit system.

- Professional Liability - This insurance covers liability arising from providing professional advice and related services. For transit systems that direct senior staff to provide professional or management advice to other (perhaps smaller) systems on technical issues (e.g., routes, fare schedules, etc.) a liability exposure may result, especially if done under a formal contract for compensation. A special policy must be procured to cover this exposure.

## Property

Property insurance provides for the replacement or repair of damaged real and personal property and may cover resulting costs (extra expense) or loss of revenues (business interruption). The policies are typically divided into two parts to address the property insured and the perils insured against.

- Property insured - coverage may be attained with specific limits on scheduled properties or a blanket limit for all locations. Blanket coverage which states "all real and personal property" is preferred because it reduces the chance that a limit is understated or that a location is not listed.

- Perils insured - generally includes fire and related damage such as smoke and water damage, debris removal, and lightening. Other perils may be included or may be added by endorsement such as civil commotion, hail, explosion, riot, flood, and earthquake. The need for coverage for these perils varies with the location of the transit system. So-called "all risk" coverage is preferred to "named perils" forms.

Policies may be purchased to cover the actual cash value or replacement value. This means that the property may be valued based on the original cost minus depreciation or based on today's cost for in-kind replacement. Most buildings must be insured for a stated (co-insurance) percentage of their value or the loss recovery is reduced.

**Crime**

Crime insurance provides protection from loss of money, securities, and property due to dishonest acts of employees and non-employees. Two options for structuring crime insurance are:

- Monoline policies - a fidelity bond for employees and one or more policies for non-employees. The fidelity bond protects the transit system from theft. The bonding company has the right to recover its loss from embezzlement and similar criminal acts of employees from the employee or official and attach their assets. Robbery, burglary and depositors forgery policies are among the types of crime insurance purchased to protect against these types of crimes perpetrated by outsiders.

- Package policies are sometimes called 3-D or blanket crime policies. The 3-D policy allows the selection from a number of limits and coverages such as employee dishonesty, loss of money and securities, depositors forgery, and money order and counterfeit paper currency. The blanket crime policy covers all of the same crimes with a single blanket limit.

Differences in crime policies exist regarding whether they are per employee or per loss regardless of the number of employees. Consequently, policies must be carefully checked before they are purchased.

## Workers' Compensation

All states have laws that require employers to pay the pertinent medical bills and wage loss benefits to employees injured in the course of employment. The benefits, which vary by state and are detailed in schedules, obligate the employer to pay 1) medical, surgical, and hospital related costs; 2) compensation for lost wages; and 3) specified disability and death lump sums benefits. Many programs include some method of vocational rehabilitation so that a permanently disabled worker may return to wage-earning employment.

Workers' compensation benefits may be paid directly by the employer through self-insurance or through insurance which is written by three types of carriers: agencies-writing companies, direct-writing companies, and state funds. Self-insurance for public agencies is permitted for all states except North Dakota and Wyoming. States qualify and often approve individual self-insurance programs. Because workers' compensation claims have traditionally been predictable and moderate compared to liability claims, most transit systems self-insure for workers' compensation benefits.

# APPENDIX K

# OCCURRENCE AND CLAIMS-MADE LIABILITY INSURANCE

FC&S Bulletins Casualty & Surety, The National Underwriter Company

# OCCURRENCE AND CLAIMS-MADE TRIGGERS

*In the 1986 CGL Coverage Forms*

The 1986 commercial general liability coverage forms, CG 00 01 and CG 00 02, differ from each other only with respect to their coverage A "triggers." The "trigger" of each form is the event that must happen during the policy period in order for the policy to apply to the claim. Form CG 00 01, like the 1973 comprehensive general liability policy, has an "occurrence" trigger, whereas form CG 00 02 has a "claims-made" trigger for coverage A. The introduction of the claims-made trigger is unquestionably the most significant difference between the old CGL program and the new. These pages discuss the two coverage A triggers, with emphasis on handling the many options available with the claims-made trigger. The triggers applicable to coverage B (personal and advertising injury) and coverage C (medical payments) are taken up in the general discussions of those coverages that follow on the Ab- and Ac- pages of this tab.

The trigger of the occurrence form is bodily injury or property damage that occurs during the policy period. If someone is injured by the named insured's product today, the occurrence policy in effect today will apply to the loss whether claim is made against the insured this year or some later year (assuming the claim is otherwise covered). The trigger of the claims-made form, on the other hand, is the first making of a claim against the insured during the policy period. If someone is injured today but does not make claim against the insured until after the policy is renewed next year, the claim will be covered under next year's policy only. This example assumes that the bodily injury occurred after the "retroactive date" stated in the renewal policy and that no exclusions applied to the loss. The retroactive date is an extremely important feature of the new claims-made form and will be discussed in detail later.

Much more needs to be said about the occurrence and claims-made triggers, but the foregoing explanation should help to explain *why* Insurance Services Office has introduced the claims-made trigger.

## Why Claims-Made

Consider first the occurrence trigger. Ordinarily, the occurrence trigger presents no problem to the insurer. A customer slips and falls in a store, he makes claim against the insured storekeeper, the claim is paid by the storekeeper's insurer, and the file is closed a few months after the accident happened.

But not all claims are so straightforward. In claims for injury resulting from prolonged exposure to dangerous substances such as asbestos, some courts have held that bodily injury occurred during the entire time that a claimant was exposed to the harmful substance. Other courts have held that bodily injury occurred even while the substance was "residing" in the claimant, i.e., during the time between exposure to the substance and manifestation of disease. Consequently, every occurrence policy in effect during the years of exposure, and perhaps those in effect during the time of residence as well, can apply to the eventual claim, which may be made years or even decades after the initial exposure. So, insurers have had to pay losses calculated by

today's inflated standards under long-expired policies for which the insurer received a premium inadequate to pay for the later claims.

The proposed remedy is the claims-made trigger. In contrast to the occurrence trigger, it allows coverage to apply under a particular policy only if claim is made during the term of that policy. The insurer will know, by the end of the policy period, of all claims that may be payable under that policy. It will not have to reserve for unreported claims, as it would have to do under an occurrence policy. Thus, the insurer will be better able to predict an adequate rate for the next policy period. If, five years later, claim is made against the insured for bodily injury resulting from exposure during the earlier policy periods, the claim will not be covered under any policy other than the one, if any, in effect at the time claim is made.

The foregoing description, however, is somewhat oversimplified. It ignores two claims-made features that can reintroduce some or all of the uncertainty associated with the occurrence trigger. These features are the retroactive date, mentioned earlier, and the extended reporting period option. Both features are discussed in detail later, along with the other specific provisions of the claims-made trigger. For now, it will suffice to say that because of the options that these features allow — both for insureds and insurers — anyone dealing with the new claims-made form must acquire proficiency in arranging claims-made coverage. Failure to do so can result in uninsured losses for the insured, errors and omissions claims against producers, and the insurer's failure to collect an adequate premium.

### Occurrence Trigger Provisions

The provision expressing the occurrence trigger is contained in the coverage A insuring agreement of form CG 00 01. It states that:

> This insurance applies only to "bodily injury" and "property damage" which occurs during the policy period.*

Essentially the same requirement is expressed in the 1973 CGL in the definitions of "bodily injury" and "property damage." So, as respects the trigger of coverage, the 1986 occurrence form is virtually identical to the previous CGL.

Two other trigger-related provisions, also found in the coverage A insuring agreement of form CG 00 01, are as follows:

> b. Damages because of "bodily injury" includes damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."
>
> c. "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.

Provision (b) makes it clear that if death results from bodily injury at any time — for example, in the following policy period — damages for the resulting death will be considered to be payable under the policy in effect at the time the bodily injury

*This and other quotations in this discussion are copyrighted material of Insurance Services Office, Inc., and used with its permission. Copyright, Insurance Services Office, Inc., 1982, 1984.

occurred. Provision (c) makes a similar statement regarding loss of use of tangible property that has not been physically injured. If, for example, a covered occurrence during the policy period results in loss of use of portions of a building that are not physically injured, the resulting loss of use will be covered under the policy in effect at the time of the occurrence regardless of whether the loss of use extends beyond the policy period.

The policy definition of "property damage" includes "all resulting loss of use" of property that *has* been physically injured, which should make it clear that such loss of use, even if it extends past policy expiration, is covered by the policy in effect at the time of the physical injury to the property.

In general, insureds have preferred occurrence-type coverage over claims-made coverage, due to its straightforward approach. Still, it can present some pitfalls. If an insured goes out of business but still has products or work on the market, injuries resulting from those products or work that occur after policy expiration will not be insured under the previous policies. If the insured wants insurance for that exposure, it must purchase a separate policy or policies to extend protection past expiration of the policy last in effect while the business was still a going concern.

Another pitfall of occurrence coverage is that the limits of liability for a previous policy may prove to be inadequate for paying claims made many years after the injury occurred. If a product of the insured's is found to have caused bodily injury 20 years earlier, the resulting claims will be covered by the policy in effect at the time of the injury. Limits that seemed more than adequate 20 years ago could be grossly inadequate by contemporary, inflated standards. Moreover, the limits of liability of the 20-year-old policy may have been reduced by other claims filed in the intervening years.

Despite these pitfalls, occurrence-type coverage is relatively uncomplicated and foolproof from the insured's point of view. As long as the insured keeps occurrence-type coverage in effect at all times, bodily injury or property damage that occurred during that time will be potentially within coverage under one or more of the past policies. Keeping coverage continuous, that is, avoiding "coverage gaps," does not require a great deal of expertise. Although claims-made coverage, if arranged properly, can address to some extent the two pitfalls discussed earlier, and even guarantee the insured of continuous coverage, a considerably higher level of expertise is required in arranging the insurance, because of the options and variables involved in claims-made coverage.

### Claims-Made Provisions

The claims-made trigger is expressed in the following statement, contained in the coverage A insuring agreement of form CG 00 02:

★ b. This insurance applies to "bodily injury" and "property damage" only if a claim for damages because of the "bodily injury" or "property damage" is first made against any insured during the policy period.

(1) A claim by a person or organization seeking damages will be deemed to have been made when notice of such claim is received and recorded by any insured or by us, whichever comes first.

★ There are some important points to consider here. The trigger, first of all, must be a "claim for damages." Although the named insured is required, by another provision in the policy, to notify the insurer as soon as practicable of any occurrence that may result in a claim, notification of an occurrence alone does not trigger coverage. There must be an actual *claim for damages.* * And, it is the *first* making of a claim for damages that activates coverage. Provision b(1) makes it clear that the claim will be considered to have been made once notice has been received and recorded by any insured *or* the insurer, whichever happens first.

★ Until amended by ISO in October 1985, the claims-made trigger language also required that the notice of claim be in *writing.* The latest language, quoted above, does not require that. However, when it deleted the requirement of written notice of claim, ISO added the requirement that notice of claim must be received *and recorded.* Consequently, the provision in the claims-made form respecting duties of the insured in the event of claim was also amended to require the insured to "immediately record the specifics of the claim and the date received" and provide written notice of the claim to the insurer as soon as practicable.

Comparable to two provisions of the occurrence form are the following provisions from the claims-made form:

(2) All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury," will be deemed to have been made at the time the first of those claims is made against any insured.

(3) All claims for damages because of "property damage" causing loss to the same person or organization as a result of an "occurrence" will be deemed to have been made at the time the first of those claims is made against any insured.

An example of how provision (2) might apply is as follows: A person injured by the insured's product first makes claim for resulting medical expenses a few months after the injury occurs, and those expenses are payable under the policy in effect at the time the claim for damages is made. If, in a later policy period, the claimant dies from his earlier injuries and his estate makes claim against the insured for loss of services and funeral expenses, that claim will be deemed to have been made at the time the first claim was made. So, the second claim will be payable under the policy in effect at the time the first claim was made. It will not be payable under the policy in effect at the time the second claim was made. Consequently, the additional claim will be subject to the applicable limits of liability of the previous policy.

Provision (3) has much the same effect, as respects property damage claims. If, for example, a person who has already made claim for property damage makes a subsequent claim for property damage arising out of the *same occurrence,* the subsequent claim will be treated as though it was made at the time of the first claim.

★ *However, under certain circumstances the policy does provide an automatic five-year extended reporting period for claims arising out of an occurrence that takes place after the policy's retroactive date and is reported to the insurer not later than 60 days after the end of the policy period; the five-year tail is described in more detail later in these pages.

### Retroactive Date

Like many independently filed claims-made insurance policies, ISO's claims-made coverage form has a provision for imposing a retroactive date. The retroactive date is the date that defines the extent of coverage for claims resulting from "prior acts," i.e., occurrences that happened before the inception of the policy in effect at the time claim is made. If a claim is made for bodily injury or property damage that occurred before the retroactive date, the policy will not respond, even though all other requirements of the claims-made trigger have been met.

The retroactive date provision of the ISO claims-made form is located in the coverage A insuring agreement. It reads as follows:

> This insurance does not apply to "bodily injury" or "property damage" which occurred before the Retroactive Date, if any, shown in the Declarations.

When issuing a policy to a new insured, the insurer is free to impose whatever retroactive date it deems appropriate, just as the insured may request (though not necessarily receive) whatever retroactive date it deems in its best interests. Once a retroactive date has been established, however, ISO rules permit the date to be advanced only with the written consent of the first named insured and then only:

1. If there is a change in carrier;
2. If there is a substantial change in the insured's operations which results in an increased exposure to loss;
3. If the insured fails to provide the company with information the insured knew or should have known about the nature of the risk insured that would have been material to the insurer's acceptance of the risk, or fails to provide information requested by the insurer; or
4. At the request of the insured.

The considerations involved in selecting retroactive dates are discussed later in these pages. Those considerations are best made after gaining an understanding of the extended reporting periods provision.

### Extended Reporting Periods

To summarize what has already been said, the claims-made trigger has two requirements: (1) the claim must be first made (i.e., received and recorded) during the policy period; and (2) the bodily injury or property damage for which claim is being made must have occurred after the retroactive date, if any, shown in the policy. If a claim is made after the policy period ends, the expired policy will provide no coverage for the claim, even if requirement (2), above, is met. Accordingly, the purpose of the extended reporting periods, set forth under section V of the claims-made form, is to provide coverage under an expired claims-made policy for claims first made after the policy has expired.

Extended reporting periods, sometimes called "tail" coverage, may be needed in a number of situations. Consider the following examples:

- An insured goes out of business and simply cancels its claims-made policy.
- An insured's claims-made policy is cancelled by the insurer and the insured is unable to obtain new insurance.

- An insured's claims-made policy is replaced with an occurrence policy.
- An insured's claims-made policy is replaced with a claims-made policy; however, the new claims-made policy's retroactive date is set at a date later than the retroactive date in the previous policy.

Now, say that a claim is made against each of these insureds, after expiration of the previous policy, for injury that occurred after the retroactive date of the policy and before its expiration. Assuming that no extended reporting period applies to the previous policy, the claim will not be covered under the previous policy in any of these examples, because it was not made during the previous policy period.

Moreover, the insureds in the first and second examples, because they have not obtained new insurance policies, will have no other insurance to look to. The insured in the third example, even though it has an occurrence policy in effect at the time of the claim, will also be without coverage, because the occurrence policy only covers bodily injury and property damage that occur during the policy period. In this example, the injury occurred before the new policy's inception.

The insured in the last example may or may not have coverage for the later claim. Although the claim is made during the policy period of the new claims-made policy, it will not be covered unless the injury or damage occurred after the new retroactive date. If, for example, the new retroactive date is the same as the inception date of the new policy, the insured will not have coverage under the new policy for any claims resulting from injury or damage before that date.

The extended reporting periods provision in section V of the policy provides an *automatic* extended reporting period of limited duration for claims made after the policy period, and it enables the insured to buy an *optional* extended period of unlimited duration for such claims. The automatic extended reporting period is provided without an additional premium charge. The policy refers to the automatic coverage as the *"basic* extended reporting period." The optional extended reporting period requires an additional premium, as is explained in more detail later. The policy refers to the optional coverage as the *"supplemental* extended reporting period."

The basic tail and the option to purchase the supplemental tail are provided if the policy is cancelled or not renewed — by either the insured or the insurer. They are also provided if the insurer renews or replaces the policy with one that either has a later retroactive date or applies on an occurrence basis. Although earlier editions of the claims-made CGL coverage form did not provide extended reporting periods if the policy was cancelled for nonpayment of premium, that restriction was eliminated in amendments filed in January 1986.

### Basic Extended Reporting Period

The basic tail actually provides for two separate periods of different length. One period runs for five years from the end of the policy period, and the other for 60 days from the end of the policy period.

The five year tail is for claims resulting from an occurrence of which the insurer is notifed after the policy's retroactive date but not later than 60 days after the end of the

policy period. (And, of course, the occurrence must have *taken place* before the end of the policy period and after the applicable retroactive date.) To illustrate, say that a customer slips and falls on the insured's premises at some time during the policy period. The insured reports the details of the occurrence to the insurer as soon as practicable, also before the end of the policy period, but no actual *claim* is made against the insured by the end of the policy period. Any resulting claim will be covered under the expired policy (subject, of course, to policy limits and conditions) if claim is made before the end of the five year period.

The 60 day tail applies to all other claims, i.e., claims that result from occurrences during the policy period (or after the retroactive date) that were *not* reported to the insurer before 60 days after the end of the policy period. Say, for example, that the same occurrence as above happened without the insured's knowledge, and so the insured did not notify the insurer. The unknown and unreported occurrence will be automatically covered under the expired policy only if claim is first made within 60 days after the end of the policy period. If the insured wants a discovery period of unlimited duration, the supplemental tail will need to be purchased.

The basic tail does not apply to claims that are covered under subsequent insurance purchased by the named insured. To illustrate, say that the insured obtains a renewal claims-made policy with the same retroactive date as the previous policy. A claim is first made during the policy period of the renewal for an accident that occurred during the previous policy period and was reported to the insurer before the end of that period. Although the claim would otherwise qualify for coverage under the five year tail, the existence of the subsequent insurance for the accident voids any coverage under the previous policy. The policy states that this is true even if the subsequent policy's aggregate limits have been exhausted by previous claims.

Another important feature of the basic tail is that it is subject to aggregate policy limits. If those limits have been reduced by previous claims, those reduced limits will be applicable to any claim made within the basic tail period.

Although the basic tail provides potentially valuable coverage, it does not meet all insured's needs in all cases. The insured needs only to consider the possibility that a reported occurrence might not result in a claim until five years *and one day* after policy expiration, or an unreported occurrence might result in claim 61 days after policy expiration. In either case, the basic tail will provide no coverage whatsoever. Unless the insured's current policy is a claims-made policy with a retroactive date going back to that of the expired policy, there will be the possibility of uninsured claims unless the insured purchases the supplemental tail, which provides for an extended reporting period of unlimited duration.

### Supplemental Tail

While the basic tail is provided automatically and for no additional premium, the supplemental tail is provided by endorsement, for an additional premium, and only if requested by the insured in writing within 60 days after the end of the policy period. If the insured does not exercise its option within 60 days after the end of the policy period, the insurer will have no obligation to sell the insured the supplemental tail

endorsement. Thus, any insured that might need the supplemental tail should make a final determination before the 60 day period expires. To summarize what was said earlier, the need for the supplemental tail exists when (1) the insured switches from claims-made to occurrence coverage; (2) the insured no longer carries liability insurance; or (3) the previous policy is renewed or replaced with claims-made coverage subject to an advanced retroactive date.

A notable feature of the supplemental tail endorsement (designated CG 27 01) is that it automatically provides separate aggregate limits equaling the policy's original aggregate limits. (The basic tail, recall, is subject to the regular policy aggregate limits, even if reduced by previous claims.) However, neither the endorsement nor its separate limits take effect until the end of the basic five year tail (for claims resulting from occurrences reported to the insurer within 60 days after the end of the policy period) or the 60 day tail (for claims resulting from occurrences that were not previously reported to the insurer). Once it takes effect, the endorsement provides an extended reporting period of unlimited duration.

The extended reporting periods provision allows the insurer to determine the premium for the supplemental tail endorsement in accordance with the insurer's rules and rates. The insurer may take into account:

a. The exposures insured;

b. Previous types and amounts of insurance;

c. Limits of Insurance available under this Coverage Part for future payment of damages; and

d. Other related factors.

However, the premium for the endorsement may not exceed 200% of the annual premium for the coverage part to which the endorsement would be attached. (The "coverage part" is the combination of CGL coverage forms and allied endorsements, whether they constitute a monoline policy or merely part of a commercial multi-peril policy.) The premium for the extended reporting period endorsement is fully earned upon the endorsement's effective date, and the endorsement cannot be cancelled if the premium is paid promptly when due.

In response to concerns that insurers could abuse the 200% cap on pricing tail coverage by applying a 200% charge in all cases, ISO has distributed advisory tail rating factors to insurers. The factors will also be provided to insurance regulators under ISO guide (a) rating procedures. Subject to the 200% maximum, insurers could in most states deviate from the factors by documenting their files with appropriate justification. In some states, the insurer would need to submit the chosen factor to ISO or the state insurance department.

The supplemental extended reporting period endorsement amends the regular other Insurance provisions of the policy so that the coverage of the endorsement "will be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after the Supplemental Extended Reporting Period begins."

To illustrate, say that an insured's claims-made policy is cancelled and the insured, unable to find replacement coverage within 60 days after cancellation, purchases the

supplemental tail to protect against claims for earlier occurrences. Some time later the insured succeeds in obtaining claims-made coverage with a retroactive date that encompasses the earlier policy period. After the new policy takes effect, claim is made against the insured for injury that occurred during the previous policy period. The claim is covered under both the supplemental tail endorsement and the new claims-made policy. Because of the other-insurance provision under discussion, the new policy will be primary insurance and the supplemental tail coverage will be excess. Recall that if a claim is covered under the insured's later policy and the *basic* tail, the insured cannot collect anything — not even excess cover — under the basic tail coverage.

### Considerations in Issuing Claims-Made Policies

Now that the claims-made trigger provisions, including the retroactive date and extended reporting periods, have been described, it is possible to consider the various choices that can be made in arranging claims-made coverage, as well as the ramifications of those choices.

For every claims-made policy issued, the insurance company must decide on a retroactive date, subject to the ISO rule (see Aat-5, this tab) imposing limitations on when the insurer can advance the retroactive date. Similarly, the insured must be able to decide what retroactive date it will be willing to settle for. There are three possibilities:

- The retroactive date may be the same as the policy's inception date;
- The retroactive date may be some date earlier than the policy's inception date; or
- No retroactive date may be imposed.

When the retroactive date indicated is the *same* as the policy's inception date, the insured will have no coverage under that policy for prior occurrences. If a claim made during the policy period is to be covered, the bodily injury or property damage from which the claim arose must also have occurred during the policy period. This kind of retroactive date should be acceptable to most insureds if they had been insured exclusively under occurrence liability policies prior to the inception of the claims-made policy. Prior occurrences, in that case, are potentially within the coverage of the occurrence policy or policies in effect at the time the injury or damage occurred.

If, however, the insured had been previously insured under a claims-made policy, a retroactive date concurrent with the inception date of the new policy will leave a coverage gap. The new claims-made policy will not cover any claims, even if made during the new policy period, for bodily injury or property damage occurring *before* that policy's inception date. The insured's only automatic coverage for such claims will come by way of the basic tail in the expired policy. Thus, if the insured is unable to obtain a retroactive date that goes back to the inception of the insured's first claims-made policy, the insured should purchase the supplemental tail endorsement under the expiring claims-made policy, unless it wishes to self-insure the prior acts exposure that lies beyond the basic tail coverage.

Likewise, the insurer too should consider all of the consequences of advancing a retroactive date. If the new policy is a renewal of a claims-made policy issued by the same insurer, the insured will likely request a supplemental extended reporting

period endorsement from the insurer. The insurer will be obliged to issue the endorsement, which will, in effect, turn the last claims-made policy into an occurrence liability policy, re-creating the uncertainty about future claims that led ISO to introduce claims-made insurance in the first place.

Secondly, the manual premium for the new claims-made policy will be less than what it would have been had the insurer extended the same retroactive date that applied to the expiring policy. This is because claims-made rates are modified by factors that increase with the number of years (up to five) the insured has been in the claims-made program. The number of years in the claims-made program is measured from the applicable retroactive date. So, when the insurer moves the retroactive date up to the inception date of a renewal, it "starts over" with the first-year claims-made multiplier and receives less premium than if it could apply the "mature" claims-made modifier.

Insureds also need to understand this rating aspect of claims-made coverage. If the choice of coverage is guided solely by cost, the insured will, year after year, choose "first year" claims-made coverage — that is, a claims-made policy whose retroactive date is concurrent with that policy's inception date. The problem with this, of course, is that unless supplemental tail coverage is purchased the insured will have only basic tail coverage for claims made during the current policy period that result from injury or damage that occurred before inception of the current policy. Thus, the prospective "savings" from buying first-year claims-made coverage needs to be weighed against the cost — and inconvenience — of buying supplemental tail coverage under every expiring policy.

When an insurer is issuing a claims-made policy to an insured for the first time — that is, the policy is not a renewal — the insurer should still consider the possibility of using a retroactive date earlier than the new policy's inception date. Say, for example, the insured had four years of claims-made coverage before making application to the new insurer. If the new insurer proposes a retroactive date concurrent with the new policy's inception date, it will be able to quote a first-year claims-made premium as well as avoid liability for earlier occurrences. However, the insured will for all practical purposes be forced to purchase an extended reporting period endorsement from the previous insurer. If the premium for that endorsement plus the premium for the new policy is considerably more than the premium for renewing the existing policy, the insured may decide not to switch insurers after all.

If the retroactive date on the new policy is set as the inception date of the insured's first claims-made policy, the retroactive date should not create any coverage gaps or require the insured to buy supplemental tail coverage. Naturally, in some cases the insurer may be willing to set a retroactive date earlier than the inception date of the new policy but not all the way back to the inception of the insured's *first* claims-made policy. That could be the case if the insurer felt that reported or unreported occurrences from that prior period could pose an unacceptable risk. Here again, because the new retroactive date does not extend all the way back to the retroactive date of the *first* claims-made policy, the insured will need to buy the supplemental tail endorsement under the expiring policy.

The third possibility for retroactive dates — not imposing any retroactive date whatsoever — has the effect of providing coverage for bodily injury or property

damage for which claim is first made during the current policy period, regardless of when the injury or damage occurred. Although attractive to insureds, this option will probably see limited use, particularly for insureds whose products or work have been on the market for some time or whose products or work have a potential for causing latent disease.

If, however, the insured had continuous occurrence-type coverage in effect for all years leading up to the claims-made policy being issued, the insurer may be amenable to imposing no retroactive date, in view of the fact that earlier occurrences would be covered on a primary basis under the earlier occurrence-type policies and only on an excess basis under the claims- made policy in effect at the time claim was made.

### Exclusion of Specific Accidents, Etc.

As said earlier, when a claims-made policy is being issued, injury and damage that occurred before the inception of the new policy can be excluded simply by imposing a retroactive date that is concurrent with the inception date of the new policy. When that is done, all injury or damage that occurred before the new inception date will be excluded, even if claim is first made during the new policy period. The preceding discussion also pointed out why such a retroactive date is not desirable for the insured and in some cases may be undesirable for the insurer. Moreover, there may be situations when ISO rules do not permit the insurer to advance the retroactive date (see Aat-5).

As an alternative to excluding *all* prior occurrences through the retroactive date, an ISO endorsement (CG 27 02) is available for excluding specific accidents. An insurer might use this endorsement if it were willing to extend an earlier retroactive date but did not want to be liable for certain injuries known to have occurred before policy inception. The endorsement allows the insurer to exclude the known accident(s) without having to impose a retroactive date that excludes *all* prior occurrences, known or unknown.

The endorsement, which is entitled "exclusion of specific accident(s), products, work or location(s)," can also be used, as its name implies, to exclude specific products, work, or locations. As is the case with specific accidents, the insurer must describe the specific products, work, or locations in the endorsement. When that is done, coverage for the products, work, or locations specified is excluded whether the injury or damage occurred before or after inception of the new policy. Thus, apart from excluding specific accidents known to have happened, the exclusion might be used in the following situations:

- The insured has sold, and continues to sell, a certain product that the insurer does not want to insure for any price. Apart from the particular product, the insurer is willing to insure the rest of the insured's products liability exposure, including claims made during the new policy period for prior accidents involving products other than those the insurer wishes to exclude. To accomplish these aims, the insurer could provide an earlier retroactive date but attach the exclusionary endorsement with a description of the particular product to be excluded.
- The insured wishes to self-insure certain products or work without excluding the products-completed operations hazard entirely. The insured could ask the insurance company to exclude the particular products or work in consideration of a reduced premium.

- The insurer does not want to assume liability for a particular location of the insured's; or, the insured wants to self-insure a particular location. In either case, excluding the location allows the insurer to provide coverage for the insured's other CGL exposures.

Note that the exclusion must be attached to all subsequent claims-made policies if the insurer wants the effect of the endorsement to continue. To illustrate, say that an insurer is renewing a claims-made policy that excluded a particular accident. If the accident has not resulted in a claim against the insured by renewal time and the insurer is still unwilling to insure the potential claim, the insurer should exclude the accident from the renewal policy as well.

When the exclusion of specific accidents, products, work, or locations is *first* added to a renewal policy, the insurer must also amend the expiring policy with another endorsement, CG 27 03, entitled "amendment of section V — extended reporting periods for specific accident(s), products, work or location(s)." This endorsement extends the expiring policy's *basic* tail coverage to apply to the excluded accidents, products, work, or locations. It also gives the insured the option to purchase *supplemental* tail coverage with respect to those items. Supplemental extended reporting period endorsement CG 27 04 is available for providing that coverage under the expiring policy if the insured elects it. Like the supplemental tail endorsement CG 27 01, endorsement CG 27 04 provides separate aggregate limits equal to the aggregate limits in the policy to which the endorsement is attached.

### Special Products Problem

When a particular *accident* has been excluded as described above, endorsement CG 27 04 provides the means of insuring any claims later arising out of that accident. Such is not necessarily the case with products, however. For example, say that the named insured manufactures a batch of 100,000 jars of a contaminated foodstuff, and the jars are widely distributed before the defect is discovered. Upon policy renewal the insurer therefore excludes the entire batch, via endorsement CG 27 02, in the renewal policy.

Besides adding the exclusion to the renewal policy, the insurer will be obliged to amend the expiring policy with endorsement CG 27 03. That will extend the *basic* tail coverage of the expiring policy to the excluded batch and allow the insured to purchase *supplemental* tail coverage for the excluded batch. If the insured purchases the supplemental tail, the expired policy will cover, for a period of unlimited duration, any claim first made after the end of the policy period, *but only if the claim arises out of an injury that occurred before the expiration date.* There is still the possibility, even if the insured has recalled the defective batch, that someone will consume the contaminated product and sustain injury *after* the renewal policy has gone into effect. Because the injury occurred after the inception of the renewal policy, a resulting claim will be excluded by both the renewal policy and the expired policy, despite the existence of supplemental tail coverage under the expired policy. Note that a similar problem could arise with respect to excluded work or locations.

Consequently, the exclusion of specified products, work, or locations should be avoided if at all possible, unless the insured consciously chooses to self-insure the exposure to loss from injury occurring after the effective date of the exclusion. If the insured wishes to maintain insurance for the exposure despite the insurer's intention to exclude the product, work, or location, the insured must either (1) negotiate with the insurer to have the insurer refrain from adding the exclusion or (2) find another insurer that is willing to insure the exposure. Either approach will almost surely involve a premium increase.

If the replacement policy is claims-made, it obviously must not contain the exclusion that the previous insurer wanted to use. Beyond that is the matter of retroactive date. If the new policy's retroactive date is *later* than the expiring policy's, the insured will need to buy supplemental tail coverage under the expiring policy if it wishes to insure, without time limit, its exposure to claims first made after termination of the expiring policy that result from injuries occurring before the termination. In the unlikely event that the retroactive date on the new policy is the same as that on the expiring policy, supplemental tail coverage will be unnecessary, assuming the new insurer has not excluded any prior accidents, products, work, or locations.

If the new policy is on an *occurrence* basis, it will cover claims, whenever they are first made, that result from injury that occurs during its policy period. The need for supplemental tail coverage from the expiring policy will be just as acute as when the new policy is claims-made with a later retroactive date than that in the old policy.

# CLAIMS-MADE VS. OCCURRENCE LIABILITY

*Requires Close Attention*

The introduction of claims-made Liability policies came about because of insurers' declining ability to predict with any accuracy tomorrow's costs for today's occurrences. Economic inflation means future settlements will be increased by an unknowable factor. "Social inflation" — heightened willingness to sue coupled with ever higher court awards — adds still another unknown. Unfortunately, the claims-made Liability policies, while solving a major problem for insurers, have created several for insureds.

The problems center on coverage gaps of which the agent needs to be aware so that, in turn, the agent can inform the insurance buyer of the effect of the claims-made device and thereby hope to prevent any misunderstanding. More importantly, with foresight and proper attention, the gaps discussed in this treatment can be closed.

Since the present trend is toward greater use of claims-made wording in Liability policies, the following discussion contrasts the effects of Liability policies written on an occurrence basis with those written on a claims-made basis, points out the coverage gaps, and suggests precautions to be taken.

## The Occurrence Policy

The traditional method of writing Liability insurance is on an occurrence basis. An occurrence policy pays all sums for which an insured becomes liable because of bodily injury or property damage caused by an *occurrence*. Various policy definitions further specify that coverage on an occurrence basis is conditioned on bodily injury or property damage that occurs *during* the policy period.

Thus, an occurrence insurer can become responsible for providing coverage for occurrences reported long after the policy has expired, particularly when the subject of insurance is products liability or professional liability. The period of time between the occurrence and the time the claim is made or reported is generally known as the "tail." The longer the "tail," the greater the problem for the insurer.

The occurrence insurer must compute premiums for a Liability policy at current rates even though claims may become highly inflated long after the premiums cease to be paid. As a consequence, premiums received by the insurer may well be inadequate against the inflated claims of the future. Inadequate pricing could result in a decrease of insurance capacity and, consequently, a decrease in the number of new policies an insurer is willing to issue. Further, premium dollars whose value has been decreased by the effects of inflation are of less worth when it comes time to pay losses. This could result in high insurance costs or unavailability of insurance on the market.

★ From the standpoint of coverage, the occurrence arrangement is generally prefer-

red by insureds, because it assures that they will always have coverage for claims whenever made, due to injury that occurred during an earlier policy period. A retired doctor, for example, who had his Malpractice coverage on an occurrence basis for every year of his practice need not continue buying Malpractice insurance after he retires. Yet, despite its advantages to insureds, occurrence coverage does pose possible problems for insureds. In inflationary times, it can create the illusion that the insured has adequate limits for long-tail claims. That is, although the insured *will be covered* for earlier occurrences, that coverage will be subject to the limit of liability in effect at the time of the occurrence — which may be totally inadequate by today's inflationary standards.

### The Claims-Made Policy

★ The claims-made arrangement not only offers a solution to the "long-tail" problem, by providing a higher degree of certainty in forecasting losses and computing premiums, but it also provides a market for the insured at what may be more equitable prices. And, if properly understood, it compels the insured to review coverage needs for unreported prior acts in view of current economic conditions.

Liability coverage written on a claims-made basis provides, at best, for payment of claims regardless of when the occurrence took place as long as the claim is made or reported during the policy period. In fact, however, coverage under a claims-made form is usually subject to a "retroactive date" provision to exclude any claim stemming from injury that occurred prior to the specified retroactive date. In any event, a claims-made policy will only pay those claims that are actually made during the current policy period.

### Coverage Gaps

Claims-made policies can present three coverage gaps. First, an insured may find that there is no coverage for a claim filed after the claims-made policy expires (i.e., is not replaced). This situation is especially likely when an insured retires or goes out of business. Coverage can be obtained by purchasing one-year extensions (extended reporting periods) following termination of the claims-made policy, for the discovery of subsequent claims. If the policy is cancelled by the *insurer,* the insured usually has the opportunity to buy continuing coverage from that insurer for at least three years thereafter. Policy provisions will vary, of course, and so each policy should always be checked.

The second coverage problem involves any claims-made form that contains a limitation in coverage with respect to the retroactive date. When an insured changes coverage on a claims-made basis from one insurance company to another, there may be a coverage gap if the new policy does not duplicate the prior policy's retroactive date. If the claims-made policy of Company B does not include in its retroactive date the full term of the previous claims-made policy of Company A, then the insured needs to purchase an extended discovery period from Company A. Some claims-made insurers offer a limited extension or discovery period such

as one year, or perhaps three. Others, in addition to providing for an extension of the discovery period, make available a final extension that has the effect of converting the claims-made form to a full occurrence form.

The third coverage gap occurs when an insured changes from Liability coverage on a claims-made basis to coverage on an occurrence basis. A gap in coverage arises when an occurrence takes place while the claims-made form is in effect but it is not reported until the occurrence form is in effect. The company providing coverage on a claims-made basis is not obliged to respond, because the claim was not reported during its policy period. The company providing coverage on an occurrence basis does not respond to the claim either, because the occurrence did not take place during its policy period. To avoid this gap, the insured must purchase as great an extension of discovery as possible from the claims-made insurer so as to maintain coverage for prior acts not reported until coverage is on an occurrence basis.

★ **Note**

At present, standard Liability forms (i.e., those drafted by advisory organizations such as Insurance Services Office) are all on an occurrence basis other than those for Pollution Liability insurance and Medical Professional and Lawyers Professional Liability insurance. See Public Liability Copl- and Dm- pages in the Casualty volume for discussions of the claims-made provisions of those standard forms. The fact that most claims-made policies in use today are independently filed forms — again, largely in the areas of professional liability and products liability — underscores the need to analyze the claims-made provisions of each policy on an individual basis.

## Illustrations

In deciding which insurer should respond to a loss, it is always necessary to determine whether the policy is written on a claims-made or an occurrence basis. The following charts illustrate various situations that may result when Liability coverage is written on an occurrence basis, on a claims-made basis, when coverage is changed from occurrence to claims-made, and, finally, when coverage changes from occurrence to claims-made and back to occurrence.

**Occurrence Coverage**

| Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|---|---|---|---|
| Company W | Company X | No Insurance | Company Y | Company Z |

An occurrence in Year 4 causes injury in Year 4. Company Y is accountable for the claim or suit because the injury occurred during its policy period. Company Y would also be accountable if the injury were not reported until Year 5, because the injury occurred during its policy period. Company W would be accountable for a Year 1 occurrence even if the injury were not reported until Year 5 (the long tail). And no insurer will have responsibility for a claim stemming from an occurrence in Year 3.

### Claims-Made Coverage

| Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|---|---|---|---|
| Company X | Company Y | Company Y | No Insurance | Company Z |

An occurrence causes injury in Year 2 but the injury is not reported until Year 3. The claim is covered by Company Y under the claims-made policy — which applies to the *claim* regardless of when the occurrence took place (since it occurred during a time when claims-made coverage was in effect and there was no interruption in coverage). If the claim had been made in Year 4, there would have been no coverage, unless extensions in coverage had been obtained from Company Y. However, if an occurrence that took place in Year 1 is revealed in a claim in Year 2, there may be a problem with coverage unless the retroactive dates of Company Y's policy duplicate Company X's, or Company X's policy was converted through extension to an occurrence form.

### Occurrence to Claims-Made Coverage

| | Occurrence Forms | | Claims-Made Forms | |
|---|---|---|---|---|
| Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Company A | Company B | Company C | Company D | Company D |

An occurrence causes injury in Year 3 (occurrence form). Company C is accountable even if a claim is not reported until Year 4. The obligation of Company D, assuming Company D's retroactive date does not precede the policy inception date, is only for injury that occurs on or after its inception date and then only if the claim is reported during its current or subsequent policy period.

### Occurrence to Claims-Made to Occurrence Coverage

| | Occurrence Forms | | Claims-Made Form | Occurrence Form |
|---|---|---|---|---|
| Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Company A | Company B | Company C | Company D | Company E |

An insured who changes from a claims-made form with Company D to an occurrence form with Company E needs special gap coverage (extended discovery period) to pick up coverage for injury that occurs during Year 4 but is not reported until Year 5. Company D would not be accountable for the injury occurring in Year 4 because the claim was not *reported* during its policy period, and Company E would not be accountable because the injury did not *occur* during its policy period. With special gap coverage, Company D would be accountable for injury that occurs during Year 4 but is not reported until Year 5 or perhaps longer depending upon the terms of the special coverage.

# APPENDIX L

# INSURANCE POLICY OPTIONS

### Deductible Insurance Plans

With a deductible insurance policy the insured pays a specified amount for each occurrence before the insurer's obligation begins. The insurer is responsible for claims handling, settlement strategy and the management of all claims within and above the deductible amount. While the insured is taking on a part of the risk with this type of policy, all of the services provided by the insurer for primary and excess insurance are maintained. These policies should cost less than first dollar coverage and should be pursued rather than doing without or not having enough excess insurance.

### Self-Insured Retention Plans

Self-insured retention (SIR) plans, like deductible plans, offer the insurance buyer the opportunity to retain some risk without losing protection for unexpected catastrophes. Self-insured retention plans do not differ substantially from deductible plans except that commonly:

- Under a deductible plan, the insurer handles the claims, makes claim settlement decisions and bills the policyholder for the amount of the deductible.

- Under a self-insured retention plan, the insured assumes primary responsibility for claim handling and must pay losses up to the attachment point of the insurance after which the insurance company is responsible for payment.

- Self-insured retention plans commonly allow for larger risk retention levels than do deductible plans.

Many states require self-insured entities to prove financial responsibility before they are permitted to implement a self-insurance program for vehicle liability. Local financial responsibility laws must be checked to determine their application to transit systems. In some states, such laws do not apply to governmental entities. (Chapter IV of this manual discusses self-insured retention programs in more detail.)

### Variable Cost Insurance

Many insurers offer variable cost, often call retrospectively rated, liability insurance to certain classes of their policyholders. The ultimate cost of such plans is directly affected by the dollars of loss the insurer must pay out on the insurance buyer's behalf. Premiums under these programs are said to be loss responsive. Except for this feature, this insurance product is identical to the standard fixed-cost insurance product. For example:

- the insurer issues a policy that has coverage terms and limits like a fixed-cost policy;

- generally the insured has an SIR which is funded on an incurred basis;
- the insurer handles all claims and manages the claims settlement; and
- policy premiums are developed through typical methods of rating exposures and taking into account the insured's experience.

Under a typical retrospectively rated policy, the insurer begins by charging a predetermined premium just as it would have under a fixed-cost insurance program. (The premium includes both a basic charge, for policy issuance, administration and profit, and a charge for excess insurance premium for catastrophic losses.) However, six months or so after the end of the coverage year (and annually thereafter until all claims are closed), the insurer recalculates the premium due based on the losses it has paid or reserved on behalf of the policyholder. Typically, if the policy holder incurs few accidents, the insurer will refund a portion of the premium. Conversely, if the policyholder has an adverse loss record, it would have to contribute additional premium.

Other features of variable cost insurance are that a minimum and maximum premium are usually specified. The insurer collects a portion of the premium and uses it to pay its operating expenses. The expense portion of the premium dollar usually represents the minimum amount of premium the insurer will retain. Insurers generally limit the maximum amount they will charge to some predetermined percentage of the go-in premium. This maximum percentage protects the insured from a truly catastrophic year in terms of losses incurred.

For vehicle liability insurance, these plans have historically been offered to policyholders with $250,000 or more in annual premium. The plans allow the insurance buyer to retain a portion of the risk of loss without subjecting it to the risks of a completely self-insured program. Furthermore, if insurers in a hard insurance marketplace would offer a retrospectively rated program, policyholders would have the opportunity to "earn back" all or a portion of what many observers believe are insurance premium overcharges.

### Paid Loss Retro Insurance

This type of insurance is similar to the variable cost insurance (or incurred loss retro) discussed above except that with a paid loss retro insurance plan the insurance carrier is reimbursed for claims upon payment of losses. This approach staggers the flow of premiums since payout for losses is much slower than the reporting of losses. This staggering of premiums offers greater cash flow savings to the insured than the incurred loss retro plan.

Premium payments for the paid loss retro insurance plan are composed of the same basic elements as the incurred loss retro. Both types of insurance plans include:

- basic fee charge - for policy issuance, administration and profit;
- loss conversion factor - a factor applied to losses for claims management and handling;
- tax multiplier - a tax charged by various states which includes taxes, boards, and bureaus residual market loadings which are dependent on the type of coverage; and
- excess insurance - fee charged for pure risk transfer for sensitive or catastrophic areas or exposures.

Like incurred loss retro insurance, paid loss retro has a minimum and maximum premium rate established in advance to protect the insurer and the insured and to determine standard premium rates.

**Compensating Balance Plans**

This type of insurance plan attains its name because the insured must maintain a compensating balance in a bank account. The insurance plan includes three parties: the insured, the insurer and the bank.

- the insured - pays a full premium to the insurer at the beginning of the policy term.
- the insurer - deducts its expenses and possibly an escrow fund for several months of paid losses from the premium.
- the bank - holds the balance of the premium in an account in the insurer's name.

The insured's losses are paid overtime and drawn on the bank account.

# APPENDIX M

# SAMPLE REQUEST FOR PROPOSAL AND INTERVIEW GUIDELINES FOR PROSPECTIVE CONSULTANTS

REQUEST FOR QUALIFICATIONS AND CONCEPTUAL PROPOSAL

Dear _____:

The _____ Transit Authority (the transit system) is remarketing its property and liability insurance. Your firm is one of several the transit system is considering. The transit system would like to receive a proposal from your firm describing:

1. Your qualifications to handle the transit system insurance coverages.

2. The alternatives you believe the transit system should explore in organizing a property and liability insurance program.

One copy of your response to this request should be submitted to the undersigned no later than 4:00 p.m. on _____. Following receipt of responses to this request, each respondent's proposal will be thoroughly evaluated. Brokers believed to be more qualified will be invited to an oral interview. Following the interviews, the broker(s) to market the program will be selected. At that time, bid specifications will be released.

At this time, you are not authorized to approach insurers on the transit system's behalf. Doing so will be grounds for disqualifying your firm from further consideration.

The following is the planned schedule of important dates for the remarketing process:

| | Activity | Target Date |
|---|---|---|
| 1. | Qualifications and conceptual proposals submitted | March 1, 1988 |
| 2. | Interviews with selected firms | March 12, 1988 |
| 3. | Bid specifications released to specified broker(s) | March 15, 1988 |
| 4. | Insurance quotations returned | June 3, 1988 |
| 5. | Program awarded to successful broker(s) | June 13, 1988 |
| 6. | Insurance program becomes successful | July 1, 1985 |

Any inquiries regarding this request for qualifications and conceptual proposals should be directed to the undersigned. The remainder of this letter requests your response to certain questions.

## I. QUALIFICATIONS

This section of the request for brokers' qualifications and conceptual proposals contains questions that will allow the transit system to learn more about your firm and its capabilities. Please respond to the questions listed below.

Quality of written presentations is important. Your answers should be well organized, clear and concise.

1. Provide a brief history and description of your firm. The description should include the size (number of employees and/or revenues) and areas of specialization. Provide this same information for the office that would handle the transit system's account.

2. If available, include a copy of your latest annual report or other comparable document.

3. Provide the names and experience of each individual who would be assigned to work on the transit system's account. This should include account executives, marketing personnel and others that would actively work on this account. Be sure to identify the individual within your firm who will have overall responsibility for the transit system's account and the office in which each account team member is located.

4. Provide the names and telephone numbers of at least three references. The references should preferably be transit systems generally of similar size to this organization.

5. Describe your firm's ability to assist us in proving a difficult claim with insurers.

6. Describe any special expertise your firm has in providing insurance to transit systems or other public agencies.

7. Describe how you plan to be compensated, on the basis of fees or commissions. If you plan to be paid a fee, how will the amount of the fee be determined?

8. Describe what you will do to keep abreast of our loss exposures.

9. We prefer to deal with a broker with an office within 50 miles of our service area. Please describe how you will address this concern.

## II. CONCEPTUAL PROPOSAL

This part of the letter asks you to describe your approach to providing property and liability insurance to the transit system.

### A. Program Structure

The transit system has a wide range of exposures and some risk management program features of which you should be aware in preparing your conceptual proposal. These include the following:

1. The transit system can retain up to $50,000 per loss occurrence. The transit system can retain in the range of $200,000 to $300,000 in property and liability losses per year. We now buy "first-dollar" property and liability insurance.

2. The transit system plans to cover all liability loss exposures to a limit of at least $50 million.

3. The transit system plans to purchase directors' and officers' coverage for a limit of $200,000 per occurrence.

4. The transit system wishes to specify a particular claim administration firm for either insured or self-insured liability programs. This firm does an outstanding job and maintains an excellent reputation. Please identify any conflicts this creates with your proposed program.

### B. Insurance Companies

Please list the insurers (showing the complete name of each), in order of preference, that you would approach for providing coverage to the transit system. For each insurer, be sure to identify any managing general agent or surplus lines broker which you would use. Also, list the current Best's

rating and indicate whether the insurer is admitted in the State of _____. If you plan to use the London market, please identify London brokers and specific underwriters (Lloyd's syndicates or other carriers) that will be used.

If you would propose that the transit system join a pooling program to obtain coverage, please state the name of the pool and include a brief description of its organization and operation.

Please use Exhibit 1 to provide the requested information. Attach an additional page if you wish to list specialty insurers for certain coverages or to list additional carriers.

C. Conceptual Approach

Please describe the insurance program (or alternative programs) that you think may be most desirable to this organization. If practical, through charts or graphs, lay out the design of the program, showing limits each insurer will provide, deductibles (or self-insured retentions) the system should accept, the relationship of major insurance policies and how the insurers listed in Exhibit 1 (or a pooling program) will be utilized (i.e., coverages and limits they will provide). In describing the approaches you believe we should explore, please describe any program features which you believe would be particularly attractive to this organization. These features could include use of particular insurers or reinsurers, pooling programs, combined aggregate programs, use of a particular adjusting firm, special rating plans, special types of coverage, particular services available from your firm or the insurers you would use, etc.

D. Marketing Process

Page 1 of this request contains the transit system's planned schedule of activities. Working within that schedule (or with changes you feel necessary), present the plan of action you will follow to market our coverages.

E. Selected Underwriting Data

So that you will know more about the transit system's exposures and better understand the magnitude of our operations, the following information is provided:

1. The average daily ridership is about _____.

2. Total property values are about $___ million. The maximum values at any one location are $__ million.

3. The transit system has an annual operating budget of about _____.

4. The transit system has approximately _____ motor buses and _____ non-revenue vehicles.

5. The transit system's payroll is about $_____.

6. Summary property and liability loss data is attached.

7. The transit system does not own or operate planes or boats.

It is understood that the data listed above is minimal. Complete underwriting data will be available in the bid specifications. If you require additional information to prepare your conceptual proposals, please call the undersigned.

* * * * *

We appreciate your interest in the transit system's program and look forward to receiving your reply. Again, your response should be sent by March 1.

Best regards,

_____
Risk Manager

INSURANCE COMPANIES
(List in Order of Preference)

| | Insurer | Surplus Lines Broker or Managing General Agent | Current Best's Rating | Admitted in (yes or no) |
|---|---|---|---|---|
| **Property** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| **Boiler and Machinery** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| **Crime** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| **Primary General Liability** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

INSURANCE COMPANIES
(List In Order of Preference)

| | Insurer | Surplus Lines Broker or Managing General Agent | Current Best's Rating | Admitted In (yes or no) |
|---|---|---|---|---|
| **Automobile Liability** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| **Umbrella/Excess Liability** | | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

AGENDA

INTERVIEW OF PROSPECTIVE BROKERS

CITY OF _____

August 15, 1988

A. BRIEF DESCRIPTION OF BROKERAGE FIRM

1. Introduction of personnel.

2. Background of persons to work on this account.

3. Brief description of related experience.

B. MARKETING

1. Discuss insurance carriers requested (use of surplus lines brokers, limits the insurer will provide, amount of the risk the insurer will retain, use of reinsurers, the lines of coverage the insurer will write, exclusive arrangements with the insurer, etc.).

2. What are some of the coverage features the insurers will provide to the transit system? Is the insurer flexible on its form? Do the insurers require a minimum self-insured retention?

3. Describe your marketing process.

4. What is your approach to pricing?

5. What is the minimum Best's rating your firm will recommend?

C. LOSS PREVENTION

1. Describe the scope of services available from the insurers you want to use.

2. Describe the scope of services available from your firm and the cost.

3. What specific steps can you take to help the City reduce injuries to its patrons?

D. CLAIM CONTROL

1. Describe your ability to assist the transit system in auditing the performance of the liability claims adjusting organization.

2. Describe your ability to assist the transit systems with the settlement of difficult or unusual claims.

E. OTHER SPECIALIZED SERVICES

1. Will you provide an annual activity report?

2. If necessary, can you provide statistical reports or actuarial services?

3. Can you assist with the development of insurance and indemnity requirements for contactors?

4. Describe other services you can provide.

F. COMPENSATION

1. Describe how you prefer to be compensated.

2. Describe how the amount of compensation will be determined.

3. Is your office charged for time spent by personnel in another office of the firm?

## NOTICE



**DOT-T-88-25**

TECHNOLOGY SHARING

A Program of the U.S. Department of Transportation